

RESOLUTION NO. 005-25

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HIGHLAND PARK, TEXAS RATIFYING AN AGREEMENT BETWEEN THE TOWN OF HIGHLAND PARK AND COLE CONSTRUCTION, INC. FOR THE EMERGENCY STORMWATER REPAIR; MAKING FINDINGS EXEMPTING SUCH CONTRACT FROM THE REQUIREMENTS OF COMPETITIVE BIDDING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or around February 1, 2025, heavy rainfall and flooding caused a section of storm drainage pipe to fail under Lakeside Drive, located in the Town of Highland Park (the "Town"), and such failure required emergency stormwater repairs; and

WHEREAS, Texas Local Government Code Section 252.022(a)(2) provides that procurements necessary to preserve or protect the public health or safety of the municipality's residents are exempt from competitive bidding; and

WHEREAS, the Town Council finds it was necessary for the Town to enter into an emergency agreement for the repair of the stormwater system under Lakeside Drive without the delay of competitive bidding to preserve and protect the health and safety of Town residents.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Highland Park, Texas:

SECTION 1. That the findings and premises contained in the WHEREAS clauses above are hereby deemed to be true and correct and incorporated as a part of this Resolution for all purposes. The Town Council specifically finds that the above stated conditions existed in Lakeside Drive, that it was necessary for staff to procure emergency repairs to the stormwater system, and that this procurement was not subject to the competitive bidding requirements of Chapter 252 of the Local Government Code because it was necessary to preserve and protect the public health and safety of the Citizens of the Town.

SECTION 2. That the Agreement, attached hereto as **Exhibit A**, executed by Town staff for the emergency repairs and the expenditure of \$343,500 for the services provided by Cole Construction, Inc. are hereby ratified and approved.

SECTION 3. This Resolution shall become effective from and after its date of passage in accordance with law.

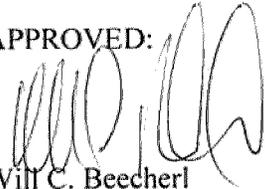
PASSED AND APPROVED by the Highland Park Town Council on this 6th day of May 2025.

APPROVED AS TO FORM:



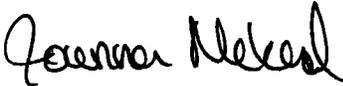
Susan Thomas  
Town Attorney

APPROVED:



Will C. Beecher  
Mayor

ATTEST:



Joanna Mekeal  
Town Secretary

**Exhibit A to Resolution**  
Cole Construction Agreement

**CONSTRUCTION CONTRACT  
TOWN OF HIGHLAND PARK  
CONTRACT NO. 2025-10-005-4506-03**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**KNOW ALL MEN BY THESE PRESENTS:**

THIS CONTRACT is made and entered into on the date fully executed, by and between the **TOWN OF HIGHLAND PARK, TEXAS**, a municipal corporation, of the County of Dallas and State of Texas, hereinafter termed the OWNER, and **Cole Construction Inc.**, a Texas [type of corporation] located at 10315 Alta Vista Road, Fort Worth, TX 76244, hereinafter termed the CONTRACTOR.

WITNESSETH: That for and in consideration of the mutual covenants hereinafter set forth, the OWNER and CONTRACTOR agree as follows:

**I. DESCRIPTION OF WORK**

The CONTRACTOR shall perform all of the work as specified in the contract documents such work generally described as:

**ARMSTRONG AVENUE DRAINAGE REPAIRS2025-10-005-4506-03**

Plans and specifications prepared by:

**Town of Highland Park Engineering Department and Kimley-Horn and Associates, Inc.**

All extra Work shall be performed as specified or indicated in the Contract Documents; and, at the CONTRACTOR'S own cost and expense, the CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services as may be necessary in order to complete the construction, as described above and in accordance with the Contract Documents unless otherwise agreed to by the OWNER.

**II. CONTRACT DOCUMENTS**

The Contract Documents shall consist of the following:

1. this Contract, including addenda thereto and properly authorized change orders;
2. Town of Highland Park Insurance Requirements (attached hereto as **Exhibit A, "Required Insurance and Proof of Insurance"**);
3. the Standard Specifications for Public Works Construction (North Central Texas Fifth Edition November 2017), as may be amended (herein referred to as "Standard Specifications" or "General Provisions"), except as otherwise modified herein;
4. Town of Highland Park supplements to the Standards Specifications (attached hereto as **"Section 3 – Supplemental Provisions"**);
5. Town of Highland Park amendments to the Standard Specifications (attached hereto as **Section 4 – Special Conditions**);
6. Town of Highland Park written notice to proceed to the CONTRACTOR;
7. the CONTRACTOR'S bid proposal/proposal attached hereto in **Section 1 – Bid Requirements**;

8. a Performance Bond in the sum of ONE HUNDRED PERCENT (100%) of the total Contract price, which Bond shall be in a form acceptable to the OWNER, shall guarantee the work in accordance with the plans and specifications for a period of two (2) year after acceptance by the OWNER, and shall provide for repair or replacement of all defects due to faulty material and/or workmanship that appear within a period of two (2) years from the date of acceptance by the OWNER;
9. a Payment Bond in the sum of ONE HUNDRED PERCENT (100%) of the total Contract price; and
10. any other documents identified as pertaining to this Contract, all of which have been identified by the OWNER and the CONTRACTOR and attached hereto; and
11. any other bid materials distributed by the OWNER that relate to the project.

These above Contract documents constitute the entire agreement between the OWNER and CONTRACTOR, and all are fully incorporated herein. The Contract documents are complementary and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency in any of the provisions of the Contract documents, the inconsistency shall be resolved by giving precedence to the Contract documents in the order in which they are listed above. The Contract may be altered, amended or modified only as provided herein. These Contract Documents supersede all oral or written previous contemporaneous agreements between the parties relating to matters in this Contract.

### **III. TIME OF COMMENCEMENT, COMPLETION AND LIQUIDATED DAMAGES**

The CONTRACTOR shall perform and complete all the items of Work listed and referred to in the Contract Documents on an as-needed basis as directed by the OWNER. Contract time for tasks shall be agreed upon between the OWNER and the CONTRACTOR on an individual project basis. If an agreed upon schedule cannot be reached the OWNER reserves the right to enter into an Agreement with another qualified CONTRACTOR to meet the schedule needed. All limitations of time set forth herein are material and are of the essence of this Contract. It is understood by the CONTRACTOR and OWNER that actual damages caused by the failure of the CONTRACTOR to complete the work within the stated time are impractical or extremely difficult to fix or ascertain, and that per diem deduction from the Contract price shall be retained by the OWNER as payment by the CONTRACTOR of liquidated damages, and not as penalty for such failure. Such liquidated damages to be assessed and retained are set forth in the Standard Specifications.

### **IV. CONTRACT PRICE AND TERM**

The OWNER shall pay the CONTRACTOR for the performance of the work, subject to additions and deductions by change order or as otherwise provided in the provisions of this Contract, which has been procured in compliance with the Texas Local Government Code, Texas Government Code and the Texas Tax Code, a total sum not to exceed Three Hundred Forty-Three Thousand Five Hundred Dollars 00/100 (\$343,500.00) in accordance with the Contract Documents. OWNER shall pay CONTRACTOR using current funds, and such payments shall be subject to the Supplemental Provisions and Standards Specifications, as contained in the Contract Documents. CONTRACTOR shall be paid for actual work performed on the basis of the unit prices in the Bid Proposal.

### **V. DEBTS**

The OWNER may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to OWNER from CONTRACTOR, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to OWNER has been reduced to judgment by a court.

## **VI. CONTRACT ADMINISTRATION**

This Contract shall be administered on behalf of the OWNER by its Director of Engineering or their designee (referred to herein as "OWNER Representative") and the CONTRACTOR shall fully comply with any and all instructions from said OWNER Representative. With execution and delivery of the Contract, the CONTRACTOR shall furnish and file with the OWNER in the amounts herein required a maintenance bond in the amount of **100 percent** of the Contract and performance and payment bonds in accordance with the provisions of V.T.C.A. Government Code, Chapter 2253 if this is a public work contract in excess of fifty thousand dollars (\$50,000.00). If this Contract is renewed for one or more additional terms, in accordance with Section IV above, OWNER may require CONTRACTOR to renew or provide additional bonds.

## **VII. LABOR CLASSIFICATION AND MINIMUM WAGE SCALE**

The CONTRACTOR is required to follow all provisions of Chapter 2258 of the Texas Government Code in the hiring and payment of all skilled and unskilled labor used on this contract. The CONTRACTOR must pay the wage rate determined by the U.S. DOL to be the prevailing wage under the Davis/Bacon Act.

## **VIII. CONTRACTOR REPRESENTATIONS & CERTIFICATIONS**

- A. In order to induce OWNER to enter into this Contract, CONTRACTOR makes the following representations:
1. CONTRACTOR has examined and carefully studied the Contract Documents, including Addenda.
  2. CONTRACTOR has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. CONTRACTOR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. CONTRACTOR has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. CONTRACTOR has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  6. CONTRACTOR has considered the information known to CONTRACTOR itself; information commonly known to contractors doing business in the locality of the Site;

information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR; and (c) CONTRACTOR'S safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, CONTRACTOR agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  8. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
  9. CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.
  10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  11. CONTRACTOR'S entry into this Contract constitutes an incontrovertible representation by CONTRACTOR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
- B. CONTRACTOR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph VIIB:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) OWNER influence the bidding process or the execution of the Contract to the detriment of OWNER, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive OWNER of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of OWNER, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### **IX. DISCLOSURE OF CONFLICTS OF INTEREST AND COMPLIANCE WITH OTHER APPLICABLE LAWS**

The CONTRACTOR shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect the CONTRACTOR or the services and/or items to be provided, specifically and not limited to any ethics laws. In particular, the CONTRACTOR is put on notice that the OWNER will require the CONTRACTOR to comply with Chapter 176 of the Texas Local Government Code by completing the attached Conflict of Interest questionnaire (FORM CIQ) and returning the completed FORM CIQ to the OWNER. Additionally, CONTRACTOR must comply with Section 2252.908 of the Texas Government Code, as amended, providing that a governmental entity may not enter into certain contracts with a business entity on or after January 1, 2016, unless the business entity submits a disclosure of interested parties (FORM 1295) to the governmental entity at the time the business entity submits the signed contract to the governmental entity. Further information regarding the disclosure of interested parties' law and instructions on filing FORM 1295 can be found at the Texas Ethics Commission web site at the following web address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

#### **X. AMENDMENT**

This agreement may not be modified, altered or changed except in writing and signed by both parties wherein specific reference is made to this agreement.

#### **XI. CHOICE OF LAW, VENUE AND CONTRACT INTERPRETATION**

The obligations of the Parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law principles of Texas or any other State. Although this Contract is drafted by the OWNER, should any part be in dispute, the parties agree this Contract shall not be construed more favorably for either Party.

#### **XII. SEVERABILITY**

If any part of this Contract shall be stricken for any reason whatsoever or found to be invalid or unenforceable, that part will be severed, and the remainder of this Contract will continue in full force and effect.

#### **XIII. SURVIVAL**

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Contract, and any other provisions of this Contract which, by their terms, are contemplated to survive (or to be performed after) termination of this Contract, shall survive cancellation or termination thereof.

#### **XIV. MISCELLANEOUS**

Notwithstanding anything to the contrary contained in this Agreement, the below certifications and verifications contained in this Section XII shall survive termination of this Agreement until the applicable statute of limitations has run.

- A. Anti-Boycott Verification. The CONTRACTOR hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made pursuant to Section 2271.002, Texas Government Code. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The CONTRACTOR understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the CONTRACTOR and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section, "Anti-Boycott Verification," shall survive termination of this Agreement until the statute of limitations has run.
- B. Iran, Sudan and Foreign Terrorist Organizations. The CONTRACTOR represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code. The foregoing representation is made pursuant to Section 2252.152, Texas Government Code, and excludes the Contractor and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The CONTRACTOR understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the CONTRACTOR and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section, "Iran, Sudan and Foreign Terrorist Organizations," shall survive termination of the Agreement until the statute of limitations has run.
- C. Verifications Pursuant to Chapter 2276, Texas Government Code. The CONTRACTOR hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made pursuant to Section 2276.002, Texas Government Code, as amended. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The CONTRACTOR understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the CONTRACTOR and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section, "Verifications Pursuant to Chapter 2276, Texas Government Code," shall survive termination of the Agreement until the statute of limitations has run
- D. Verification Pursuant to Chapter 2274, Texas Government Code.

The CONTRACTOR hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any:

- (1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and.
- (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association during the term of this Agreement.

The foregoing verification is made pursuant to Section 2274.002, Texas Government Code, as amended. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code, "firearm entity" shall have the meaning assigned to such term in Section 2774.001(6), Texas Government Code, and "firearm trade association" shall have the meaning assigned to such term in Section 2274.001(7), Texas Government Code. The CONTRACTOR understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the CONTRACTOR and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section, Verification Pursuant to Chapter 2274, Texas Government Code, shall survive termination of the Agreement until the statute of limitations has run.

- E. Form 1295. Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The OWNER hereby confirms receipt of the Form 1295 from the CONTRACTOR, and the OWNER agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the OWNER and the contract identification number, neither the OWNER nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the CONTRACTOR; and, neither the OWNER nor its consultants have verified such information.

#### **XV. AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto.

IN WITNESS WHEREOF, the OWNER and CONTRACTOR have executed this Contract in the year and day fully executed below (the "Effective Date").

*[Signatures on Page following]*

OWNER:

**TOWN OF HIGHLAND PARK**

*Tobin E. Maples*

*Tobin E. Maples*  
Printed/Typed Name

*Town Administrator*  
Title

*Lori Chapin*  
Attest

CONTRACTOR:

**COLE CONSTRUCTION INC.**

*Kenneth Thorne*

*Kenneth Thorne*  
Printed/Typed Name

*President*  
Title

*[Signature]*  
Attest

(CORPORATE SEAL)

Address for giving notices:

Town Administrator's Office  
4700 Drexel Dr.  
Highland Park, Texas 75205

Engineering Department  
4700 Drexel Dr.  
Highland Park, Texas 75205

Address for giving notices:

*10315 Alta Vista Rd*  
*East Worth, Tx 76244*  
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