



STATE OF TEXAS

CITY OF SAN MARCOS

**MINOR CONSTRUCTION CONTRACT**  
**PROJECT: McCarty Lane & Lago Vista Specialized Milling Project**  
**CONTRACT # 216-294**

This Contract is made this 13<sup>TH</sup> day of November 2015 between the City of San Marcos, 630 E. Hopkins Street, San Marcos, Texas 78666 (the "City") and K.L. Durham Construction dba Performance Equipment Service, 11939 Coletto Creek, San Antonio, Texas 78253 (the "Contractor").

**1. AGREEMENTS BY THE CONTRACTOR**

A. The Contractor will provide all labor, equipment, tools, materials, supplies, supervision, and other items or services necessary to complete the work listed below as priced in the submitted Request For Quotation (Attachment A).

1. Profile Mill 8,160 square yards of existing asphalt at ¼ inch depth on McCarty Lane.
2. Profile Mill 1,049 square yards of existing asphalt at Lago Vista St.

B. The Contractor will perform all work in a good and workmanlike manner. It is understood and agreed that the Contractor is an independent contractor, and not an agent or co-venturer with the City regarding the work. The Contractor is solely responsible for, and the City will not control, the means, methods and sequences of construction used by the Contractor in performing the work. The Contractor is responsible for producing a final product that is fully functional and fit for its intended purposes, and meets all requirements of the quote. The City will be the sole judge of the acceptability of all work performed under this Contract. Any changes to the work that change the Contract price or the Contract time must be authorized by the City in a written change order (Attachment "B").

C. During the period of this Agreement, the Contractor will maintain, at its expense, insurance with limits not less than those prescribed below. Insurance underwriters must be acceptable to the City. With respect to required insurance, the Contractor will;

1. Name the City as an additional insured.
2. Provide the following information on the Certificate of Insurance:

Cancellation: All certificates will provide a thirty (30) days' written notice to the

Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.

Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

3. Provide the Purchasing Division a Certificate of Insurance evidencing required coverage prior to execution of Agreement.

4. Submit a Certificate of Insurance reflecting coverage as follows:

Automobile Liability:

Bodily Injury (Each person) .....	\$1,000,000.00
Bodily Injury (Each accident) .....	\$1,000,000.00
Property Damage .....	\$1,000,000.00

General Liability (Including Contractual Liability):

Bodily Injury .....	\$1,000,000.00
Property Damage .....	\$1,000,000.00

Workman's Compensation .....	Statutory (in accordance with Attachment "C")
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D. The Contractor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts or omissions of the Contractor, its officers, employees or agents.

E. The Contractor will ensure that employees and applicants for employment are not discriminated against based on their race, color, religion, sex, national origin, or age and that qualified persons are not discriminated against in employment practices due to disabilities.

F. The Contractor will comply with all local, state and federal laws in performing the services under this Contract.

G. A Notice to Proceed will be issued, and work will be completed within seven (7) work days from the date of the Notice to Proceed. (Attachment "D").

H. If not previously provided, along with delivery of the executed Contract, the Contractor will complete an Internal Revenue Service (IRS) W-9 Tax Form (See Attachment "E"). The City will not make payment against the Contract until it has received the properly completed form.

I. Upon completion of the work, the Contractor will provide the City with an executed Affidavit of Payment of Subcontractors (Attachment "F") and Payment Requisition (Attachment "G").

J. The Contractor will utilize the City of San Marcos Wage Rate Schedule, (Attachment "H").

## **2. AGREEMENTS BY THE CITY**

A. The City agrees to pay the Contractor a total amount of fourteen thousand two hundred seventy-three dollars and ninety-five cents (\$14,273.95) upon completion of the project and acceptance of the work performed in accordance with the attached quote. The total amount of the Contract, including any potential change order(s), cannot exceed forty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents (\$49,999.99), as determined by law.

B. All payment terms will be "Net 30 Days." Contractors are encouraged to register for direct deposit payments prior to providing goods and/or services by utilizing the AP-ACH Direct Deposit form posted on the City's Finance webpage at:

C. Funds for payment of this Agreement have been provided through the City budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of the services covered by this Agreement is considered a recurring requirement and is included as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. However, the City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. In the event that funding is not provided to continue this Agreement into a subsequent fiscal year, this agreement will terminate at the end of the last fiscal year for which funding was provided. The fiscal year for the City extends from October 1<sup>st</sup> of each calendar year to September 30<sup>th</sup> of the following year.

D. All permit fees will be waived by the City.

## **3. MISCELLANEOUS AGREEMENTS**

A. This Contract is governed by the laws of the State of Texas. Exclusive venue for any dispute arising under this Contract is in Hays County, Texas.

B. All references in this Contract to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Contract.

C. If any provision of this Contract is held to be invalid by a court of competent jurisdiction, this Contract will be construed as not containing the provision and all other

provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Contract are declared to be severable.

D. All services provided pursuant to this Contract are for the exclusive use and benefit of the City. The City is exempt from sales and use taxes under State law.

E. As to all acts or failures to act by either party to this Contract, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

F. Neither the City nor Contractor will assign, sublet or transfer any interest in this Contract without the written consent of the other.

G. The City of San Marcos is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Contract and all written information generated under this Contract may be subject to release under this Act.

H. This Contract represents the entire and integrated Contract between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both City and Contractor.

I. The City reserves the right to terminate this Contract upon breach of its terms by the Contractor.

J. This Contract may be terminated, at will, by the City upon at least five (5) calendar day's prior written notice to the Contractor. The City will be responsible for any materials ordered prior to termination of Contract.

K. The term of this Contract begins on the date established in the first paragraph of this Contract, and ends upon acceptance by the City of the completed services required under this Contract.

L. The waiver or deferral by the City to enforce any provision of this Contract on one or more occasions will not be deemed as a waiver of the right thereafter to strictly enforce this Contract.

M. The Contractor's attention is called to the fact that pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos owned and rented/leased properties are smoke free properties. All contractors, subcontractors, and their employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 10 feet of doors and windows of City-owned or rented building, all city parks and the grounds outside of any city building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate the contract for noncompliance with this ordinance.

**City of San Marcos**

By: \_\_\_\_\_  
Assistant City Manager

Date: \_\_\_\_\_

Contractor:  
**K.L. Durham Construction dba  
Performance Equipment Service**

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
11939 Coleta Creek  
Street Address

\_\_\_\_\_  
San Antonio, Texas, 78253  
City, State, and Zip

\_\_\_\_\_  
512-665-8000  
Telephone Number

\_\_\_\_\_  
n/a  
Fax Number

\_\_\_\_\_  
admin@performanceequipmentservice.c  
om  
Email Address

\_\_\_\_\_  
Federal Tax ID Number

# ATTACHMENT "A"

RFQ 216-294



PUBLIC SERVICES – TRANSPORTATION DEPARTMENT

## REQUEST FOR QUOTATION

MINOR CONSTRUCTION  
THIS IS NOT AN ORDER!!

TITLE: <b>McCarty Lane &amp; Lago Vista Specialized Milling Project</b>	
DATE: <b>June 2, 2016</b>	QUOTATION DUE: <b>June 3, 2016 at 11:00 A.M. CDT</b>

Pricing submitted in this quotation will be held firm for a minimum of thirty (30) calendar days.

Item	Description	Unit Price	Total Price	= Total Cost if Paid for w/ P-Card
1	Profile mill 8,160 square yards of existing asphalt at 1/4 inch depth on McCarty Lane.	\$ <u>1.55</u>	\$ <u>12,648</u>	\$ <u>12,648</u>
2	Profile Mill 1,049 square yards of existing asphalt at Lago Vista St.	\$ <u>1.55</u>	\$ <u>1,625.95</u>	\$ <u>1,625.95</u>
Total Price (Add Items 1 - 2)			\$ <u>14,273.95</u>	\$ <u>14,273.95</u>

SIGNING THE QUOTE FORM AFFIRMS THAT THE ORIGINAL REQUEST FOR QUOTE HAS NOT BEEN ALTERED IN ANY WAY.

SUBMITTED BY: K.C. Durham Construction DBA

Firm Name: Performance Equipment Service

Authorized Representative Name: Rebekah Canale

Firm Address: 1939 Coletto Creek San Antonio, TX 78253



## ATTACHMENT "B"

# CHANGE ORDER NO. \_\_\_\_\_ MINOR CONSTRUCTION CONTRACT #216-294

PROJECT: McCarty Lane & Lago Vista Specialized Milling Project

CONTRACTOR: K.L. Durham Construction dba Performance Equipment Service DATE: \_\_\_\_\_

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### CHANGE OR EXTRA WORK TO BE PERFORMED

TOTAL INCREASE/DECREASE \$ \_\_\_\_\_

Previous Contract Amount:	\$ _____
Net Increase/Decrease in Contract Amount:	\$ _____
Revised Contract Amount:	\$ _____
Net Increase/Decrease in Contract Time (days):	_____
Revised Contract Time (days):	_____

### Recommended/Approved by:

Consultant (if applicable)	Contractor
Authorized signature	Authorized Signature
Printed name, title	Printed name, title
Date	Date

### Approved by:

### FOR CITY USE ONLY

Purchasing Manager	Date	City Project Manager	Date
Funds verified by: _____		Account Number _____	

## **ATTACHMENT "C"**

### **Workers' Compensation Insurance Requirements**

#### **A. Definitions:**

*Certificate of coverage* or *certificate* means a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

*Commission* means the Texas Workers' Compensation Commission.

*Duration of Project* includes the time from the beginning of the work on the Project until the Contractor's/person's work on the Project has been completed and accepted by the Owner.

*Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096)* includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project.

*Services* include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. *Services* do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor will provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

C. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must file a new certificate of coverage with the Owner before the end of the coverage period showing that coverage has been extended.

E. The Contractor will obtain from each person providing services on the Project, and



provide to the Owner:

1. a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
2. no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

F. The Contractor will retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

G. The Contractor will notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

H. The Contractor will post on each Project site a notice, in the text, form and manner prescribed by the Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor will contractually require each person with whom it contracts to provide services on the Project, to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
2. provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
3. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
4. obtain from each other person with whom it contracts, and provide to the Contractor:
  - a. a certificate of coverage, prior to the other person beginning work on the Project; and
  - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

5. retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

6. notify the Owner, in writing, by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

7. contractually require each person with whom it contracts to perform as required by paragraphs (A) through (F), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

**ATTACHMENT "D"**

**Notice to Proceed**  
**MCC 216-294**

**Owner:** City of San Marcos, Texas

**Owner Contact:** Jesse Shroyer, Ph. (512) 393-8025, Email: jshroyer@sanmarcostx.gov

**Contractor:** K.L Durham Construction dba Performance Equipment Service

**Project:** McCarty Lane & Lago Vista Specialized Milling Project

**Date of Issuance of This Notice:** June 9, 2016

**Project Start Date:** June 13, 2016

The Owner notifies the Contractor to commence work on the Project by the project start date. The contract time will begin to run on the project start date. The Contractor must achieve final completion of the Project within 7 calendar days after the project start date, subject to extensions of time as provided in the Contract Documents.

The Owner reminds the Contractor of its obligation under State law to file a certificate of workers' compensation insurance with the Owner for each subcontractor to perform work at the Project site prior to the subcontractor's commencement of work.

\_\_\_\_\_  
Assistant City Manager

ACCEPTANCE OF NOTICE:  
Receipt of this Notice to Proceed is  
acknowledged by the Contractor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name, title

\_\_\_\_\_  
Date

## ATTACHMENT "E"



## ATTACHMENT "F"

**Affidavit of Payment of Subcontractors,  
Material Suppliers and Claims in Full  
MCC 216-294**

To: City of San Marcos  
630 East Hopkins  
San Marcos, TX 78666

Project: **McCarty Lane & Lago Vista Specialized Milling Project**

I certify under oath, and based upon my personal knowledge, that the Contractor has paid in full, and without any retainage whatsoever, for all materials and equipment furnished, for all work, labor and services performed, and for all indebtedness and claims against the Contractor for damages arising in any manner in connection with the Project.

This affidavit is made in accordance with Paragraph 1(I) of the Contract, and to induce the City to make final payment.

Signed on \_\_\_\_\_  
Date

Contractor: **K.L. Durham Construction  
dba Performance Equipment Service**

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

\_\_\_\_\_  
Printed name, title

Sworn to and subscribed before me by \_\_\_\_\_ on \_\_\_\_\_.

Notary Public, State of

Notary stamp:



## ATTACHMENT "G"

### PAYMENT REQUISITION NO. \_\_\_\_\_ MINOR CONSTRUCTION CONTRACT 216-294

Project Name: McCarty Lane & Lago Vista Specialized Milling Project  
Date: \_\_\_\_\_  
Contractor: K.L. Durham Construction dba Performance Equipment Service

A. Original Contract amount	\$ _____
B. Revised amount (to include approved change orders)	\$ _____
C. Work performed to date	\$ _____
D. Add materials on hand	\$ _____
E. Total work & materials (Add C. & D.)	\$ _____
F. Less previous invoices	\$ _____
G. Balance Due	\$ _____

I certify under oath, and based upon my personal knowledge, that the Contractor has paid all sums due for materials and equipment furnished, for all work, labor and services performed, and for all indebtedness and claims against the Contractor for damages arising in any manner in connection with the Project.

Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Title: \_\_\_\_\_

#### APPROVALS:

Architect/Engineer (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

City Inspector (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

City Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Finance: \_\_\_\_\_ Date: \_\_\_\_\_

PO# \_\_\_\_\_ Receipt # \_\_\_\_\_

Budget Account Number \_\_\_\_\_

☐ Check if P-Card Payment

☐ Check if final payment

REQUISITIONS MUST BE SUBMITTED WITH ORIGINAL SIGNATURES AND BACKUP.

## ATTACHMENT "H"

### CITY OF SAN MARCOS WAGE RATE SCHEDULE - Building Construction

Classification	Rate	Holiday	Overtime
Air Conditioning/Heating Mechanics	\$16.67	\$16.67	\$25.00
Asbestos Remover	\$11.33	\$11.33	\$16.99
Asbestos Worker/General Labor	\$8.50	\$8.50	\$12.75
Carpenter	\$11.25	\$11.25	\$16.87
Carpenter Helper	\$7.00	\$7.00	\$10.50
Concrete Finisher	\$9.67	\$9.67	\$14.50
Drywall Finisher	\$10.83	\$10.83	\$16.24
Drywall Hanger	\$10.83	\$10.83	\$16.24
Electrician	\$13.33	\$13.33	\$19.99
Electrician Helper	\$9.17	\$9.17	\$13.75
Equipment Operator	\$9.33	\$9.33	\$13.99
General Labor	\$7.00	\$7.00	\$10.50
Painter	\$9.17	\$9.17	\$13.75
Painter Helper	\$6.50	\$6.50	\$9.75
Pipe fitter	\$15.00	\$15.00	\$22.50
Pipe layer	\$10.00	\$10.00	\$15.00
Pipe layer helper	\$7.50	\$7.50	\$11.25
Plasterer helper	\$8.00	\$8.00	\$12.00
Plumber	\$16.00	\$16.00	\$24.00
Rebar Worker	\$10.67	\$10.67	\$16.00
Roofer	\$15.67	\$15.67	\$23.50
Roofer helper	\$8.50	\$8.50	\$12.75
Structural Iron Worker	\$14.50	\$14.50	\$21.75
Stucco Mason Helper	\$8.50	\$8.50	\$12.75
Tile Setter	\$11.50	\$11.50	\$17.25

Approved by City Council  
9/6/2005

Time and ½ for overtime (paid for over 40 hours of work in a week)