

**SECTION 00 52 43**  
**AGREEMENT**

**THIS AGREEMENT**, authorized on \_\_\_\_\_ is made by and between the Developer, Cow Town Owner, L.L.C, authorized to do business in Texas (“Developer”) , and \_\_\_\_\_, authorized to do business in Texas, acting by and through its duly authorized representative, (“Contractor”).

Developer and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

**Article 2. PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

- East Bailey Boswell Road*
- City Project Number 103320*

**Article 3. CONTRACT TIME**

3.1 Time is of the essence.

All time limits for Milestones, if any, and Final Acceptance as stated in the Contract Documents are of the essence to this Contract. Milestones are listed in Section 01 11 00 Summary of Work.

3.2 Final Acceptance.

The Work will be complete for Final Acceptance within **300** working days after the date when the Contract Time commences to run as provided in Paragraph 12.04 of the Standard City Conditions of the Construction Contract for Developer Awarded Projects.

3.3 Liquidated damages

Contractor recognizes that time is of the essence of this Agreement and that Developer will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.2 above, plus any extension thereof allowed in accordance with Article 10 of the Standard City Conditions of the Construction Contract for Developer Awarded Projects. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Developer if the Work is not completed on time. Accordingly, instead of requiring any such proof , Contractor agrees that as liquidated damages for delay (but not as a penalty), Contractor shall pay Developer fifteen hundred Dollars (\$1,500.00) for each day that expires after the time specified in Paragraph 3.2 for Final Acceptance until the City issues the Final Letter of Acceptance.

38 **Article 4. CONTRACT PRICE**

39 Developer agrees to pay Contractor for performance of the Work in accordance with the Contract  
40 Documents an amount in current funds of \_\_\_\_\_ Dollars  
41 (\$\_\_\_\_\_).

42 **Article 5. CONTRACT DOCUMENTS**

43 5.1 CONTENTS:

- 44 A. The Contract Documents which comprise the entire agreement between Developer and  
45 Contractor concerning the Work consist of the following:
- 46 1. This Agreement.
  - 47 2. Attachments to this Agreement:
    - 48 a. Bid Form (As provided by Developer)
    - 49 1) Proposal Form (DAP Version)
    - 50 2) Prequalification Statement
    - 51 3) State and Federal documents (*project specific*)
    - 52 b. Insurance ACORD Form(s)
    - 53 c. Payment Bond (DAP Version)
    - 54 d. Performance Bond (DAP Version)
    - 55 e. Maintenance Bond (DAP Version)
    - 56 f. Power of Attorney for the Bonds
    - 57 g. Worker’s Compensation Affidavit
    - 58 h. Business Equity Specifications
  - 59 3. Standard City General Conditions of the Construction Contract for Developer  
60 Awarded Projects.
  - 61 4. Supplementary Conditions.
  - 62 5. Specifications specifically made a part of the Contract Documents by attachment  
63 or, if not attached, as incorporated by reference and described in the Table of  
64 Contents of the Project’s Contract Documents.
  - 65 6. Drawings.
  - 66 7. Addenda.
  - 67 8. Documentation submitted by Contractor prior to Notice of Award.
  - 68 9. The following which may be delivered or issued after the Effective Date of the  
69 Agreement and, if issued, become an incorporated part of the Contract Documents:
    - 70 a. Notice to Proceed.
    - 71 b. Field Orders.
    - 72 c. Change Orders.
    - 73 d. Letter of Final Acceptance.
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76 Article 6. INDEMNIFICATION

77 6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own  
78 expense, the city, its officers, servants and employees, from and against any and all  
79 claims arising out of, or alleged to arise out of, the work and services to be performed  
80 by the contractor, its officers, agents, employees, subcontractors, licenses or invitees  
81 under this contract. This indemnification provision is specifically intended to operate  
82 and be effective even if it is alleged or proven that all or some of the damages being  
83 sought were caused, in whole or in part, by any act, omission or negligence of the city.  
84 This indemnity provision is intended to include, without limitation, indemnity for  
85 costs, expenses and legal fees incurred by the city in defending against such claims and  
86 causes of actions.

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88 6.2 Contractor covenants and agrees to indemnify and hold harmless, at its own expense,  
89 the city, its officers, servants and employees, from and against any and all loss, damage  
90 or destruction of property of the city, arising out of, or alleged to arise out of, the work  
91 and services to be performed by the contractor, its officers, agents, employees,  
92 subcontractors, licensees or invitees under this contract. This indemnification  
93 provision is specifically intended to operate and be effective even if it is alleged or  
94 proven that all or some of the damages being sought were caused, in whole or in part,  
95 by any act, omission or negligence of the city

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97 6.3 To the fullest extent permitted by applicable law, Contractor agrees to indemnify,  
98 defend and hold harmless Developer, Transwestern Development Company and the  
99 development manager (collectively, the foregoing are referred to as “Developer  
100 Parties”); and each of their respective affiliated companies, partners, successors,  
101 assigns, heirs, legal representatives, devisees, officers, directors, shareholders,  
102 employees, consultants and agents, now existing or which may hereafter exist, (herein  
103 collectively “Indemnitees”) for, from and against any and all claims, liabilities, suits,  
104 actions, legal proceedings, awards, judgments, damages, fines, penalties, losses, costs  
105 and expenses, including attorneys’ fees (whether or not suit is filed) and costs and  
106 expenses of litigation and of investigation (collectively “Losses and Liabilities”) to the  
107 extent caused by or resulting from the negligence of, fault of, or breach of this  
108 Contract by Contractor, any Subcontractor, anyone directly or indirectly employed by  
109 either the Contractor or Subcontractor, or anyone that the Contractor or  
110 Subcontractor control or exercise control.

111 6.4 In claims against any person or entity indemnified under this Section 6.4 by an  
112 employee of the Contractor, a Subcontractor, anyone directly or indirectly employed  
113 by them or anyone for whose acts they may be liable, the indemnification obligation  
114 under Section 6.4 shall not be limited by a limitation on amount or type of damages,  
115 compensation or benefits payable by or for the Contractor or a Subcontractor under  
116 workers’ compensation acts, disability benefit acts or other employee benefit acts.  
117 Without intending to limit the scope of liabilities in any way, and to the extent  
118 permitted by applicable law, the Contractor expressly waives its immunity under the  
119 applicable worker’s compensation statute in connection with any indemnitee’s claim  
120 for indemnification under this Section 6.4.

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**Article 7. MISCELLANEOUS**

**7.1 Terms.**

Terms used in this Agreement are defined in Article 1 of the Standard City Conditions of the Construction Contract for Developer Awarded Projects.

**7.2 Assignment of Contract.**

This Agreement, including all of the Contract Documents may not be assigned by the Contractor without the advanced express written consent of the Developer.

**7.3 Successors and Assigns.**

Developer and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements and obligations contained in the Contract Documents.

**7.4 Severability.**

Any provision or part of the Contract Documents held to be unconstitutional, void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon DEVELOPER and CONTRACTOR.

**7.5 Governing Law and Venue.**

This Agreement, including all of the Contract Documents is performable in the State of Texas. Venue shall be Tarrant County, Texas, or the United States District Court for the Northern District of Texas, Fort Worth Division.

**7.6 Authority to Sign.**

Contractor shall attach evidence of authority to sign Agreement, if other than duly authorized signatory of the Contractor.

IN WITNESS WHEREOF, Developer and Contractor have executed this Agreement in multiple counterparts.

This Agreement is effective as of the last date signed by the Parties (“Effective Date”).

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

Developer:  
*Cow Town Owner, L.L.C.*  
\_\_\_\_\_

By:  
\_\_\_\_\_  
(Signature)

By:  
\_\_\_\_\_  
(Signature)

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\_\_\_\_\_  
(Printed Name)

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(Printed Name)

Title:  
Company Name:  
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Company name:  
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