

extraction location described hereinabove and in Exhibit "A" may only be changed by mutual agreement of the Contractor and the City.

Contractor agrees to perform the Work and City agrees to pay Contractor \$1.25 per ton of material removed, for a total amount of fifty thousand and No/100 Dollars (\$50,000.00) upon completion of Work in accordance with the terms of this Agreement.

City and Contractor hereby agree to the following additional terms and conditions:

1. Prior to Performance of Work

(a) *Examination of Contract and Site.* Contractor specifically represents that it has carefully examined the site of the proposed Work and is thoroughly familiar with the nature and location of the Work, the time needed to complete the Work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the Work under this Agreement, having had the opportunity to conduct any and all additional inquiry, tests and investigation that Contractor deems necessary and proper.

(b) *Continuing Obligation.* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents to check and verify pertinent information and requirements of this Agreement. Contractor shall promptly report in writing to City's representative any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from City's representative before proceeding with any Work affected thereby. Contractor shall be liable to City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

(c) City will not be responsible for additional expenses incurred by Contractor to perform extra work necessitated by conditions which were discoverable by Contractor prior to beginning work and which Contractor failed to include in its proposal or this Agreement.

2. Dredging Responsibilities

(a) *Commencement and Completion Dates.* Contractor hereby agrees to commence Work on or after the date established for the start of Work as set forth in the notice to proceed and complete all Work within the time stated in this Agreement. The notice to proceed shall be given in writing by the City. The Work required to be performed by the Contractor in accordance with this Agreement shall be completed no later than one hundred twenty (120) days after receipt of the

notice to proceed; provided, however, that an extension shall be automatically granted for each day that inclement weather prohibits safe conduct of the Work.

(b) *Specifications.* Contractor shall complete the Work required by the description of the Work set out in the Contract Documents in a competent and efficient manner in accordance with the procedures, specifications and standards contained in the Contract Documents and all regulations, ordinances or specifications applicable to such Work (with the exception of those permits and licenses described in Section 2(i) of this Agreement which shall be the responsibility of the City), such specifications, standards, regulations and ordinances being expressly incorporated herein by reference and being made a part of this Agreement as though written herein.

(c) *Unforeseen Conditions.* Contractor must notify City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Agreement. If it is determined, by mutual agreement of the City and the Contractor, that the Badu Park site is unsuitable, then the Contractor has the right to relocate to the Oregon Street site as shown in Exhibit B. If the Oregon street side is utilized; (i) 20,000 tons shall be removed, (ii) Contractor shall receive \$2.50 per ton of material removed, and (iii) the reference in section 6(c) to \$1.25 shall be modified to \$2.50.

(d) *Protection of Lines.* Notwithstanding any other provision of this Agreement, Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. **Contractor shall indemnify or reimburse such expenses or costs (including fines that may be levied against City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the Work area.** City reserves the right to repair any damage Contractor causes to such utilities at Contractor's expense. If a public line and/or customer service line is damaged by Contractor, Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to City's representative.

(e) *Good and Workmanlike Manner.* All Work performed under this Agreement shall be performed in a good and workmanlike manner and to the reasonable satisfaction of the City and its representative.

(f) *Facilitate Inspection.* Contractor shall furnish City and City's representative with every reasonable facility for ascertaining whether or not the Work performed was in

accordance with the specifications applicable thereto, and further, access to Contractor's Eagle's Nest mine facility and associated records to verify the weight of the dredged material removed.

(g) *Means and Methods of Dredging.* Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of the Work. Contractor shall be responsible to see that the completed work complies accurately with the Contract Documents. City may reject any of the Work for which, in the judgment of the City, the Work was not performed in accordance with the Contract Documents. Prior to commencement of work to be performed the City shall drain the lake. During dredging, the Contractor shall take no action which will cause interruption of water flowing into the water intake located at the water treatment plant. Contractor shall have all accumulated materials from the dredging removed from the dewatering area within the stated time frame for the length of the contract provided, however, that if more than 40,000 tons are removed, Contractor shall have an additional 30 day period to remove such accumulated material. It is the contractors' responsibility to determine the most suitable area for the de-watering and temporary storage. Contractor shall provide a map indicating the locations, and also proposed routes of trucks. After the water course has been diverted, Contractor shall take no action which will cause less than a natural turbidity level to be maintained at the raw water intake.

(h) Contractor shall be responsible to see that the completed work complies accurately with the Contract Documents. City may reject any of the Work for which, in the judgment of the City, the Work was not performed in accordance with the Contract Documents.

(i) *Work Stoppage.* The City shall have the right to order the Work of the Contractor wholly or partially stopped:

- (1) if any of the Work being done is not in strict accordance with this Agreement; or
- (2) if any portion of the Work is being performed so as to create a hazardous condition.

Such stoppage or suspension shall neither invalidate any of Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will extra charges be allowed the Contractor by reason of such stoppage or suspension.

(j) *Permits and Licenses.* The City shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and

completion of the Work. During this Agreement term and/or period during which the Contractor is working, with the exception of those permits and licenses described in this Section 2(i) which shall be the responsibility of the City, Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work. Contractor shall have no liability for the City's failure to obtain permits and inspections or pay fees in accordance with this Section 2(i).

(k) *Safety Precautions.* Safety precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Fire Department.

(l) *Warn of Hazards.* The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the Work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

(m) *Failure of Safety Devices.* The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the Work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

(m) *Indemnity for Safety Failure.* The Contractor shall indemnify City and its officers, agents and employees from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that relate to or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment no matter where fault or responsibility lies.

(n) The City shall provide a through street from the Badu Park to Texas State Highway 29 on Holden Avenue, by temporarily changing the traffic control signs that are currently in place on the intersecting street. The contractor shall be responsible for maintaining the access from the hard surface street to the ingress and egress point to the Llano River (City/Town Lake), to the area specified in Exhibit A. In the event the ingress/egress location is changed by mutual agreement of the parties to Oregon Street the City shall provide motor vehicle access via Oregon Street, including access for trucks and semitrailers, to the area specified in Exhibit B for material

dredging, extraction and transportation to Eagle's Nest Mine facility, including a stable roadway for truck access to the 100 year floodplain and any tree trimming necessary to provide access. City shall also provide access to the nearest City property above the 100 year flood plain in case of a flooding event, but such access is limited to the duration of a flooding event. City acknowledges that there will be heavy truck traffic on certain City streets and City agrees to hold Contractor harmless for any damages to said City streets resulting from normal wear and tear caused by said truck traffic.

3. Insurance and Indemnification

(a) *Insurance.* Contractor shall provide for insurance coverage in accordance with the requirements applicable to Contractor as provided for in Exhibit "B", the provisions of which are expressly incorporated herein by reference.

(b) *Indemnification.* Contractor shall **INDEMNIFY, DEFEND, AND HOLD HARMLESS**, City, its officers, agents and employees from and against any and all suits, actions, claims, damages, losses, and expenses of any character, name and description, including, but not limited to, attorney's fees, arising out of or resulting from the operations of Contractor, its agents, employees or subcontractors; or on account of any negligent act or fault of Contractor, its agents, employees or subcontractors in performing the Work pursuant to this Agreement, including, but not limited to, any such claim, damage, loss or expense attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage. Nothing herein shall waive any governmental immunity available to the City under Texas law and any defenses of the parties under Texas law.

4. Acceptance and Payment

City shall pay Contractor the amount specified in this Agreement (\$50,000.00) within ten (10) days of Contractor completing the Work in accordance with the terms of this Agreement.

(a) *Assurance of Payment.* Prior to City's payment for the Work, Contractor shall furnish a written affidavit, in a form provided by City, stating all bids, charges, accounts or claims for labor performed and material furnished in connection with the work performed pursuant to this Agreement have been paid in full and that there are no unreleased recorded liens related to or filed against the Work.

5. Remedies and Damages

Delay Damages. If the Contractor should neglect, fail, or refuse to finally complete the Work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement, that City may withhold permanently from the Contractor's total compensation the sum of Two Hundred and Fifty and No/100 Dollars (\$250.00) for each and every calendar day that the Contractor shall be in default after the time for finally completing the Work, not as a penalty, but as liquidated damages for the breach of this Agreement.

6. Termination

(a) *Termination for Cause.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

(1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or

(2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or

(3) If the Contractor shall fail to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

(4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or

(5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

(b) *Termination for Convenience.* The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of

termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

(c) *Payment on Termination for Convenience.* In the event of termination for convenience, the Contractor shall only be paid for material removed prior such termination at the rate of \$1.25 per ton of material removed and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee. Further, in the event of termination for convenience, City shall also pay the Contractor a mobilization fee of \$2,500.00.

(d) *Right to Complete.* If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the Work itself or by others; and to this end, if this Agreement is terminated for cause, the City shall be entitled to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City, if requested to do so by the City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in completing the Work by the Contractor which fails to meet any Agreement requirements.

(e) *Close Out.* After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City, do the following:

- (1) Stop the Work on the date and to the extent specified in the notice of termination;
- (2) With the approval of City, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(f) *Breach of Agreement.* The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines, in its good faith judgment, that this Agreement is not being performed according to its understanding of the intent and

meaning of this Agreement. Such breach shall not in any way invalidate, abrogate or terminate the Contractor's obligations under this Agreement.

(g) *Completion of Work.* Wherein the Contractor has abandoned the project or the City has terminated the contract for cause, then the City at its option may provide for completion of the work, including but not limited to the employment of such force of workers and use of instruments, machinery, equipment, tools, materials, and supplies as the City may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor.

(h) *Damages.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (1) If the Contractor shall fail to remedy any default after written notice thereof from City, as City shall direct; or
- (2) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

6. General Provisions

(a) *Agreement Controlling.* The provisions of this Agreement shall control over any conflicting provision of any contract between City and Contractor as to the completion of the Work under this Agreement.

(b) *Venue.* The parties herein agree that this Agreement shall be enforceable in Llano County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Llano County, Texas.

(c) *Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

(d) *Independent Status.* It is mutually understood and agreed by and between City and Contractor that Contractor is an independent contractor and shall not be deemed to be or considered an employee of the City of Llano, Texas, for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other. City shall not have supervision and control of Contractor or any employee of Contractor.

(e) *Amendment.* No amendments to this Agreement shall be effective and binding until it is reduced to writing and signed by duly authorized representatives of both parties.

(f) *Litigation Costs.* In the event of litigation arising out of or involving this Agreement, the non-prevailing party agrees to pay and shall pay all of the attorney's fees, court costs and other litigation costs of the prevailing party.

(g) *Texas Law.* This Agreement has been made under and shall be governed by the laws of the State of Texas.

(h) *Authority to Enter Contract.* Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations or other legal entity.

(i) *Waiver.* Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the City party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

(j) *Headings.* The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or Intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

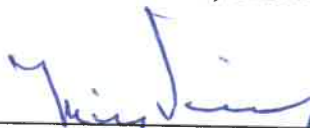
(k) *Invalidity.* If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

(l) *Written Notice.* Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least ten (10) days written notice to the other parties in writing of such change.

(m)Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

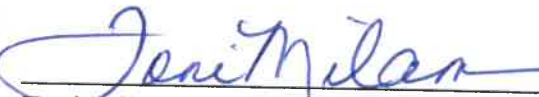
CITY OF LLANO, TEXAS:



Hon. Mikel Virdell, Mayor
City of Llano, Texas




ATTEST:



Toni Milam, City Secretary
City of Llano, Texas

CONTRACTOR:



Keith Jackson, Vice President
Chanas Aggregates, LLC