

CONTRACT

THE STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT, made and entered into this _____ day of June, 2022, by and between the City of Seabrook, a municipal corporation, hereinafter called "CITY," and Insituform Technologies, LLC., a corporation **limited liability company** hereinafter called the "CONTRACTOR," and referred to in the masculine pronoun singular whether a person, firm or corporation, WITNESSETH:

1. The Contractor agrees at his own cost to furnish all tools, labor, materials, machinery and appliances for the construction of, delivery, and/or to perform the services for the referenced project in accordance with the required specifications and instructions of the City in a safe, good, sound, workmanlike manner, in strict accordance with this contract, for the following project:

City of Seabrook

Project 2022-12: Manhole Rehabilitation at Meyer Avenue

In consideration of the sum of **Sixty three thousand, three hundred fourteen dollars and twenty one cents (\$63,314.21)**, (which sum is only an estimate if unit prices are included in the Contractor's BuyBoard Contract 635-21) to be paid to him by the City in the manner and at the time or times provided in the Contractor's Proposal, attached hereto as Exhibit A, and incorporated herein by reference. The Contractor agrees that if the scope of the Project is determined by the City to have changed after receipt of the subject bid that the amount of the referenced consideration is subject to adjustment, only on proper prior written agreement of the parties. Should the parties be unable to reach an agreement for adjustment under these circumstances, the City shall be entitled to terminate this agreement upon written notice, without any further obligation or cost. The work shall begin promptly from the date of signing of this contract, and shall be finished and fully completed within 60 calendar days from mutually agreed upon date of issuance of the Notice to Proceed.

2. The Contractor agrees that the returns and estimates of the City shall be conclusive of the amount of work completed and the sums to be paid therefor; and said Contractor shall not be entitled to be paid for any extra work which has not been previously ordered in writing by the City. When the Contractor completes the work provided for in this contract in strict accordance with the plans and specifications, the City shall, upon said work being finally accepted by said City, pay the Contractor the unit prices set out in full in the part hereof, pursuant to the attached Proposal, heretofore referred to as "Exhibit A."

It is understood that payment of the said amounts, except where otherwise provided in this contract, shall be given and received as payment in full for all the work and material described generally in Section One (1) hereof which is to be performed and furnished by the Contractor, and said prices shall be considered as including and comprehending the completion of the whole work, the bids herein being made for a complete work and not for parts of a work.

It is, however, further agreed by the parties hereto as applicable, that on or about the first day of each month during the progress of this work, an estimate shall be made by the City of the

value of the completed work done during the previous month, and when such estimate is approved, the City shall, on or about the 15th day of the month, make payment of said estimate. When the work provided for herein shall have been completed by said Contractor to the entire satisfaction of the City, Mayor and City Council, the said City within thirty (30) days thereafter shall pay to the said Contractor the full amount of the contract price, according to the final estimate of the City, less any amounts theretofore paid on monthly estimates.

3. Whenever payments on this contract are being made wholly or partially from a fund or funds received by the City as a grant or loan from any agency of the United States of America and payment of any estimate (including a final estimate) is not made within the specified time by reason of the fact that funds therefore have not been received from such Federal Agency, the time for payment of such estimate shall be extended until such time as said funds are received from such Federal Agency. Under no condition or circumstances shall the City be liable for any interest upon payments due the Contractor where the delay or delays past the due dates of such payment or payments are due directly or indirectly to any act or omission upon the part of any agency of the United States of America as part of said grant or loan. Under no condition or circumstance shall the City be liable to the Contractor for any part of any such grant or loan and the Contractor shall not be paid for the proportionate part of said work covered by said grant or loan except with monies delivered to the City by the agency of the United States of America as part of the said grant or loan.
4. The Contractor has carefully examined the surface of the site and has made sufficient tests as to fully satisfy himself that such site is a correct and suitable one for this work and he assumes full responsibility therefor. The provisions of this contract shall control any inconsistent provisions contained in the specifications. All plans and specifications have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions or situations shall this contract be more strongly construed against the City than against the Contractor and his surety. Any ambiguity or uncertainty in the plans, drawings or specifications shall be interpreted and construed by the City and its decision shall be final and binding upon all parties.

An operation, once started, is to be carried through to completion. The project inspector shall be provided ample opportunity to inspect all lines before backfilling. Contractor shall maintain and provide adequate ingress-egress for traveling public during construction operations and overnight. The Contractor shall be responsible for the safety of himself, his employees, and all other persons during construction.

5. It is distinctly understood and agreed that the passing, approval and/or acceptance of any part of the work or material by the City Council or by any authorized agent or representative as in compliance with the terms of this contract and/or of the plans and specifications covering said work, shall not operate as a waiver by the City of strict compliance with the terms of this contract, nor shall such passing, approval and/or acceptance operate to stop the City from demanding strict compliance with the terms of this contract, and/or plans and specifications covering said work; and the City may require the Contractor and/or his surety (if provided) to repair, replace, restore and/or make to comply strictly and in all things with this contract and the plans and specifications any and all of said work and/or materials which within a period of one year from and after the date of the passing, approval, and/or acceptance of any such work or material, are found to be defective or to fail in any way to comply with this contract or with the plans and specifications. Failure on the part of the Contractor and/or his surety, immediately after notice to either, to repair, or replace any such defective materials and workmanship shall entitle the City, if it sees fit, to replace or repair the same and recover the reasonable cost of such replacement and/or repair from the Contractor and/or his surety, who shall in any event be jointly and severally liable to the City for all damage, loss and

expense caused to the City by reason of the Contractor's breach of this contract and/or his failure to comply strictly and in all things with this contract and with the plans and specifications.

6. No waiver of any of the obligations of the Contractor under any of the terms or conditions of this contract, the plans, specifications or drawings, shall be binding upon the City unless the same is in writing and expressly previously authorized by the City Manager or City Council.
7. All provisions of the Charter and ordinances of the City, together with all state and federal statutes and regulations relating to public improvements are referred to and made a part of this contract; and this contract and all obligations created hereunder shall be consistent with the provisions thereof and performable in Harris County, Texas. It is expressly stipulated and agreed that venue and jurisdiction of any legal action in any way relating to this agreement shall be exclusively in Harris County, Texas.
8. Special Notice: Chapter 2258 of the Texas Government Code provides that any government subdivision shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic and shall specify in the call for bids and in the contract the prevailing rate of per diem wages which shall be paid for each craft type of workman. The Chapter makes the Contractor responsible for the acts of the sub-contractor in this respect; however, a Contractor is entitled to rely on a certificate by a subcontractor regarding the payment of all sums due those working for the subcontractor until the contrary has been determined. The Chapter likewise requires that the Contractor and sub- contractor keep an accurate record of the names and occupations of all persons employed by him and to show the actual per diem wages paid to each worker and these records are open to the inspection of the City. The City, through its representatives, will make every necessary investigation to determine whether or not these statutes are complied with and in case of violation by the Contractor, or sub- contractor, of the provisions of the statutes will take all necessary steps to enforce the penalties imposed by this law.
9. Worker's Compensation Insurance Coverage:

A. Definitions:

Certificate of coverage ("certificate") - 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 a project, for the duration of the project. *Note that should a submitted certificate of insurance include disclaimers of coverage, reflect that it is non-binding, be inconsistent with the requirements for coverage, or otherwise deemed ambiguous, as solely determined by City, the City shall be entitled, on demand, to the actual policies or evidence of required insurance coverage herein, which shall be provided prior to award of contract or any Work by Contractor hereunder.*

Duration of the 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 City.

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

contracted directly with the contractor and 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 a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing 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 satisfactory evidence of coverage to the City 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, prior to the end of the coverage period, provide evidence of new coverage satisfactory to the City showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the City:
 - (1) satisfactory evidence of coverage, as determined by City, prior to that person beginning work on the project, so the City will have on satisfactory proof of insurance coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven (7) days after receipt by the contractor, new satisfactory proof of insurance coverage showing extension of coverage, if the coverage period shown on the current policy or certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required insurance policies and certificates of coverage for the duration of the project and for one (1) year thereafter.
- G. The contractor shall notify the City 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 shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation 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 shall contractually require each person with whom it contracts to provide services on a 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 each contractor, prior to that person beginning work on the project, evidence 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 to each contractor, prior to the end of the coverage period, new evidence of coverage showing extension of coverage, if the coverage period shown on the prior proof of insurance coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) satisfactory evidence of insurance coverage, prior to the other person beginning work on the project; and
 - (b) satisfactory evidence of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on prior evidence of coverage ends during the duration of the project;
- (5) retain all required policies or certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the City 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; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (6), with the evidence 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 policy or certificate of coverage, the contractor is representing to the City 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 as provided by law.

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

10. Occupational Safety and Health Standards. The work and the Contractor's operational activities shall comply with the applicable provisions of the Department of Labor, Safety, and Health

regulations for construction, applicable Occupational Safety and Health Standards or any other law/regulations relating thereto.

11. The contractor stipulates and agrees that no work may be initiated until all applicable insurance policies, bonds and approvals required have been provided to the City and that such insurance policies, bonds and City approval of same is a condition precedent to this Contract. Contractor agrees to obtain and continuously maintain during the life of this contract insurance coverage and bonds which must meet the minimum amount required and will protect the City and contractor from claims for all damages because of bodily injury, including death to his employees and all others; and for claims for damages to property which may arise from the contractor's operation by anyone directly or indirectly employed by him. Such insurance shall name the City as an additional insured and will provide that such insurance will not be canceled without at least thirty (30) days prior written notice to the city. Contractor will be responsible for providing to the City a certificate of insurance, or policy as determined by the City, prior to starting any work under the contract pursuant to a written notice to proceed from City. The Contractor shall be responsible for and maintain insurance coverage at his option and expense to cover tools, equipment, etc., owned or rented, the capital value of which is not included in the cost of the work.

A. Comprehensive General Public Liability Insurance for bodily injury and property damage to a combined single limit of not less than \$2,000,000 each occurrence and \$4,000,000 general aggregate.

B. Comprehensive Auto Liability Insurance, including owned, non-owned, hired, or leased automobiles used in connection with this work, with bodily injury and property damage to a combined single limit of not less than \$500,000 each occurrence.

C. Property Insurance, as applicable, for building construction and plant construction located on a site shall be purchased and maintained by the Contractor on the entire project for the full cost of replacement as of the time of any loss. This insurance shall include as named insured the City, the General Contractor, and all subcontractors as their interest may appear, and shall insure against loss from the perils of fire and those perils included under "Extended Coverage." It shall include "All Risk" insurance for physical loss or damage, including, without duplication of coverage, at least theft, vandalism, malicious mischief, and transit damage. The Contractor will increase limits of coverage, if necessary, to reflect estimated replacement costs. The Contractor shall be responsible for any co-insurance penalties or deductibles. Insurance shall not be canceled or lapsed on account of any partial occupancy prior to Substantial Completion. Waiver of Subrogation shall include the Contractor, subcontractors, the City and its employees and representatives associated with the work. The Contractor shall transmit the original certificate, or policy, as required to the City prior to starting any work under the contract. Any insured property loss shall be adjusted with the City and made payable to the City as trustee for the insureds, as their interests may appear, subject to any applicable mortgage clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account, and the City shall make distribution in accordance with the agreement of the parties in interest.

D. Bonds - If the contract is for the construction, alteration or repair of any public building or the prosecution or completion of any public work and such contract exceeds the sum of \$25,000, the successful bidder must furnish a Performance Bond and Payment Bond as provided by Texas law, upon the forms which are attached hereto, or as otherwise approved by the City, and shall also be required to furnish a Maintenance Bond in the amount of 100% of the contract price from an approved surety company licensed to operate in the State of Texas to act as surety. Bonds submitted by a partnership must be signed by one of the general partners and the same witnessed

before a notary. Bonds submitted by a corporation must be signed by an officer of the corporation having the authority either granted by the corporate charter, the bylaws of the corporation, or pursuant to a resolution of the Board of Directors of the corporation, to execute such documents for the corporation, and the corporate seal must be affixed to the bond and the same attested to by the Secretary or Assistant Secretary of the corporation. Evidence of authority of the signing officer must be submitted. Bonds submitted by a sole proprietorship must be signed by the proprietor, witnessed and clearly set out the name under which the proprietor is conducting business.

12. The Contractor shall observe and comply with all Federal, State, and local laws, rules and regulations in any manner affecting the conduct of services herein provided and the performance of all obligations undertaken in the execution of this project and particularly in the employment practices engaged in, agrees that he will not discriminate because of race, color, religion, national origin, sex, age, handicap or disability. Specifically, the performance of this Contract shall comply with any and all requirements of the Americans with Disabilities Act of 1990, USC 12101 et seq.
13. The plans, profiles and specifications approved by the City Manager or the City Council are a part of this contract. The following are in particular, whether or not the same be attached hereto, a part of this contract and every covenant and undertaking therein is as fully binding upon the parties hereto as if here set forth at length, to-wit: (a) Request for Proposals, including Scope of Work and Conditions and the Contractor's Bid Proposal, (b) All of those specifications and drawings which are referred to in the Contractor's Bid Proposal. It is specifically understood and agreed that the City under no circumstances will indemnify Contractor, or any other subcontractors, or suppliers, and specifically reserves all privileges, immunities, and defenses applicable under law. In case of conflict, any provision of this document shall prevail over any conflicting provision in any of the above-listed documents, and any provision in a special item or specification pertaining particularly to the project herein referred to shall control over any inconsistent provision of the General Conditions.
14. The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the prior written consent of the City Manager who is hereby authorized to give such consent by the City Council of the City; provided, however, that assignments to banks or other financial institutions may be made without consent of the City. Furthermore, in the event of a merger, consolidation or transfer of all or substantially all of the assets of Contractor, the surviving or resulting corporation or transferee of Contractor's assets shall be bound by and shall have the benefit of the provisions of this Contract only upon the prior written consent of the City Manager. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.
15. **TERMINATION OF CONTRACT:** In the event that any of the provisions of the contract documents are violated by the Contractor, or by any of his subcontractors, the City may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) calendar days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In the event of any such termination, the City shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety

does not commence performance thereof within ten (10) calendar days from the date of the mailing to such Surety of notice of termination, the City may take over the work and prosecute the same to completion by contract or by force and at the expense of the Contractor, and his Surety shall be liable to the City for any excess cost occasioned thereby. In such event the City may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

16. The invalidity or illegality of any term, provision or condition of this contract or of any of the contract documents attached hereto shall not in any manner affect, invalidate or annul any other term, provision or condition hereof or thereof. The parties hereto expressly stipulate and agree that if they have included in this contract or in any of the contract documents any illegal term or provision, this contract shall read and be effective to the same force and effect as if such illegal term or provision were wholly deleted and eliminated herefrom or therefrom.
17. The time set forth for the work provided for herein is an essential part of this contract. The Contractor and City understand and agree that a breach of this contract as to completion on time will cause damage to the City unless an extension of time has been granted. The parties agree that each and every calendar day the work or any portion thereof shall remain uncompleted after the expiration of the time limit, that City may deduct as liquidated damages \$250 (two hundred fifty dollars) per day for each day for each calendar day beyond the contract period as referenced in paragraph 1 herein, not as a penalty, but as liquidated damages and added expense of administration, engineering and overhead.

The failure of the successful bidder to execute the Contract and supply the required bonds, if any, within ten (10) calendar days after the prescribed forms are presented for signature, or within such extended period as the City may grant in writing, shall constitute a default and the City may, at its option, either award the contract to the next best qualified bidder, or re-advertise for bids. In either case, the City may charge against the bidder the difference between the amount of the bid, and the amount for which a contract is subsequently executed irrespective of whether this difference exceeds the amount of the bid bond. If a more favorable bid is received through re-advertisement, the defaulting bidder shall have no claim against the City for a refund.

18. **THE CONTRACTOR AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR ALL CLAIMS AND SUITS, INCLUDING CLAIMS AND SUITS FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE UNDER THIS CONTRACT. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH THE CONTRACTOR AND THE CITY, THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF ANY ACTION OF ANY NATURE WHATSOEVER IN CONNECTION WITH THE WORK DONE UNDER THIS CONTRACT, AND THE CONTRACTOR HERETO EXPRESSLY WAIVES ANY CLAIMS AGAINST THE CITY OF ANY NATURE BROUGHT UPON BY CONTRACTOR THAT MIGHT HAVE BEEN A CONTRIBUTING FACTOR TO THE EVENTS AND CIRCUMSTANCES WHICH MIGHT HAVE LED UP TO THE INJURY OR OTHER EVENTS.**

MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES: NEITHER PARTY SHALL BE

Notary Public:

CITY OF SEABROOK, TEXAS:

Thomas G. Kolupski, Mayor

ATTEST:

Robin Hicks, TRMC, City Secretary

Date: _____