



**Contract for Mumford Road Waterline Extension**  
**RFP #24-024**  
**City Job No. 611-D6-2304**

**ELLIOTT CONSTRUCTION, LLC**

This Contract, dated \_\_\_\_\_, 2024 is between the **City of Bryan**, a Texas home-rule municipal corporation (City) and **Elliott Construction, LLC**, a Texas limited liability company (Contractor). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**1. Scope of Work**

The work is generally described as Mumford Road Waterline Extension in response to **RFP #24-024**, incorporated herein by reference. Contractor shall complete the work as specified and indicated in the provisions and specifications in attached **Exhibit A**.

**2. Payment**

The City shall pay the Contractor according to the terms set forth in **Exhibit A** and the cost proposal sheet in **Exhibit B**. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all work provided under this Contract may not exceed **\$1,711,143**.

**3. Time of Performance**

A. The Contractor shall commence work under this Contract on the date specified in the work order of the City Engineer and fully complete all work hereunder within **140** working days thereafter. The Contractor further agrees to pay as administrative costs the sum of **\$800** for each consecutive calendar day used over and above the specified work time.

B. Time is an important and material consideration of this Contract. The Contractor shall be prepared to provide the work and other services in an expedient and efficient manner in order to complete the work by the times specified in **Section 3.A**.

C. There shall be no extension of this contract unless approved in writing by the City. The Contractor shall bid this job with the intent of completing it within the required time.

#### 4. Performance Standards, Indemnification, and Release

A. As an experienced and qualified Contractor, the Contractor agrees that the services provided by the Contractor reflect the professional and industry standards, procedures, and performances. The Contractor agrees that the selection and supervision of personnel, and the performance of services under this Contract, will be pursuant to the standard of performance in the profession. The Contractor agrees that the Contractor will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Contractor, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy, competency and quality of the services provided, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid services provided by the Contractor, its employees, associates, agents, or subcontractors.

B. The Contractor shall promptly correct any defective work furnished by the Contractor at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Contractor's services hereunder or of the scope of work itself shall in no way alter the Contractor's obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Contractor shall be responsible for the services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Contractor shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Contractor shall have ultimate control over the execution of the services. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors.

D. The Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the project or any of the work being done on or for the project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Contractor, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. **Responsibility for damage claims (indemnification): Contractor shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Contractor's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Contractor's negligence.**

F. **Release.** The Contractor releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Contractor or its employees and any loss of or damage to any property of the Contractor or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Contractor negligent performance of the work. Both the City and the Contractor expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

## 5. Termination

A. The City may terminate this Contract at any time upon thirty (30) calendar days' written notice. Upon the Contractor's receipt of such notice, the Contractor shall cease work immediately. The Contractor shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the Contractor fails to fulfill its obligations under this Contract, or if the Contractor violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Contractor five (5) calendar days' written notice. The Contractor will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the Contractor of liability to the City for damages sustained by the City because of any breach of contract by the Contractor. The City may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the Contractor is determined and paid.

## 6. Insurance Requirements

Contractor agrees to have and maintain the policies set forth in the insurance requirements attached as **Exhibit C**. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. A lapse in any required coverage shall be a breach of this Contract.

## 7. Governmental Contract Requirements

A. Contractor must submit a disclosure of interested parties to the City in accordance with Section 2252.908 of the Texas Government Code and rules adopted under that section. The disclosure must be submitted at the time the Contractor submits the signed contract to the City on a form prescribed by the Texas Ethics Commission.

B. Contractor verifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

C. Contractor verifies, to the extent authorized by law that it does not, and will not for the duration of this Contract, boycott Israel in accordance with Section 2271.002 of the Texas Government Code.

**8. Bond Requirements:**

For contracts over \$100,000.00, a Performance Bond and a Payment Bond in an amount of not less than 100% of the Contract price, conditioned upon faithful performance of the Contract and payment of all persons supplying labor and furnishing materials, shall be executed by the successful bidder and accompany this signed Contract.

**9. Miscellaneous Terms**

A. This Contract shall be subject to and governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas. The parties agree that venue for purposes of any and all lawsuits, causes of action, or any other dispute(s) shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan  
Engineering Department  
Attn: Jayson Barfknecht  
P.O. Box 1000  
Bryan TX 77805

The Contractor  
Elliott Construction, LLC  
J. Ben Elliott  
PO Box 3788  
Bryan TX 77805  
ben@elliottcon.net

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

F. The Contractor, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Contractor must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. Any provision or part of this Contract held to be void or unenforceable under law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

H. The exhibits attached to this Contract are incorporated herein and shall be considered a part of this Contract. In the event of a conflict between this Contract and any exhibits or attachments to this Contract, the provision of this Contract shall prevail.

I. The Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). Contractor shall include the substance of this clause in subcontracts under this contract in which the subcontractor may have City contract information residing in or transiting through its information system.

J. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

**[Remainder of Page Intentionally Left Blank – Signature Page Follows]**

**APPROVED TO FORM:**

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

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

**APPROVED:**

\_\_\_\_\_  
Bobby Gutierrez, Mayor

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

**APPROVED FOR PROCESSING:**

\_\_\_\_\_  
Paul Kaspar, P.E.- City Engineer

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

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta- City Secretary

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

\_\_\_\_\_  
Jayson Barfknecht, P.E., Ph.D.  
Public Works Director

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

\_\_\_\_\_  
Kean Register, City Manager

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

**CONTRACTOR:**

By: \_\_\_\_\_  
*J Ben Elliott*

Printed Name: J Ben Elliott

Title: Member

Date: 3-27-24

STATE OF TEXAS §  
  §  
COUNTY OF Robertson §

**ACKNOWLEDGEMENT**

This instrument was acknowledged before me on the 27 day of March, 2024,  
by J. Ben Elliott on behalf of Elliott Construction, LLC



Bethany A. Pepper  
Notary Public in and for The State of Texas