

# CONTRACT

THIS AGREEMENT is made as of the date of the last signature below,

Between the Owner: **Weber County**

And the Contractor: **J Brad Barto Construction INC**  
**2438 N 2950 W**  
**Plain City UT**

For the Project: Weber County Transfer Station Tunnel Liners

## ARTICLE 1. CONTRACT DOCUMENTS

1.1 The contract documents consist of this agreement, general conditions, construction documents, specifications, all addenda issued prior to execution of this agreement and all change orders or modifications issued and agreed to by both parties. All documents noted herein shall be provided to the Contractor by the Owner. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

## ARTICLE 2. SCOPE OF WORK

2.1 The Owner agrees to purchase and the Contractor agrees to construct the above mentioned structure and fixtures attached thereto in the County of Weber, State of Utah according to the construction documents, assistance from County on extraction & placement of dump tunnel liners, allowances, finish schedules, all addenda, change orders.

## ARTICLE 3. TIME OF COMPLETION

3.1 The approximate commencement date of the project shall be November 15 2022. The approximate completion date of the project shall be December 30 2022, however any change orders and/or unusual weather might delay or otherwise affect the completion date.

## ARTICLE 4. THE CONTRACT PRICE

4.1 The purchase price of the project shall be set at the sum of 391,300.00, as per estimate which is a part of this contract subject to additions and deductions pursuant to authorized change orders and allowances.

4.2 The Owner and the Contractor acknowledge that the Owner will pay a sum of 50% of the estimate upon signing of this contract for steel supply and before construction begins as an earnest money deposit and part of the purchase price of the project.

## **ARTICLE 5. PROGRESS PAYMENTS**

**5.1** The Owner will make payments to the contractor pursuant to the attached cost breakdown. Should the owner fail to make payment, contractor may charge a penalty of 12 % annually upon the unpaid amount until paid.

**5.2** If payment is not received by the Contractor within 30 days after delivery of payment demand for work satisfactorily completed, contractor shall have the right to stop work or terminate the contract at his option. Termination by Contractor under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination. Termination by Owner shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination.

## **ARTICLE 6. DUTIES OF THE CONTRACTOR**

**6.1** All work shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order.

**6.2** All work shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.

**6.3** All work shall be performed by licensed individuals to perform their said work, as outlined by law.

**6.4** Contractor shall remove all construction debris and leave the project in a broom clean condition.

**6.5** Upon satisfactory payment being made for any portion of the work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the work for which payment has been made.

## **ARTICLE 7. OWNER**

**7.1** The Owner shall communicate with subcontractors only through the Contractor.

**7.2** The Owner will not assume any liability or responsibility, nor has control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.

## **ARTICLE 8. CHANGE ORDERS AND FINISH SCHEDULES**

**8.1** A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. 50% of the cost of each change order will be paid prior to the change, with the final 50% paid upon completion of the change order. A 12% fee shall be added to all change orders and overages in excess of initial allowances. Additional time needed to complete change orders shall be taken into consideration in the project completion date.

**8.2** Any delays or changes in finish selection schedules will delay the projected completion date.

## **ARTICLE 9. INSURANCE AND INDEMNIFICATION**

**9.1** Contractor, at its own cost, shall secure and maintain during the term of the Agreement the following minimum insurance coverage:

**9.1.1** Commercial General Liability (CGL) insurance with contractual liability coverage to cover Contractor's obligations under the Indemnification section of this agreement, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate. The policy(ies) shall protect Contractor, any subcontractor, and the Owner under the contractual liability coverage from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Contractor's operations under this agreement, whether performed by Contractor itself, any subcontractor, or anyone directly or indirectly employed or engaged by either of them. The policy(ies) shall be primary and noncontributory to any other policy(ies) or coverage available to the Owner, whether such coverage be primary, contributing, or excess. If the CGL coverage is provided on a claims-made basis, Contractor shall maintain such policy(ies) of insurance for no less than four years after termination of this agreement.

**9.1.2** Automobile Liability insurance in the minimum amount of \$1,000,000 per person, \$1,000,000 per accident, and, for property damage, \$500,000 per occurrence, or a combined single limit of \$2,000,000. "Any Auto" coverage is required.

**9.1.3** Workers' compensation coverage complying with the statutory limits as required by the Workers' Compensation Act of the State of Utah.

**9.2** Liability limits for all required coverage may be secured and maintained utilizing a single policy or multiple policies of primary and excess or umbrella coverage.

**9.3** Contractor shall indemnify and hold harmless the Owner, its officers, employees, and agents against any and all liability, loss, expense (including reasonable attorney's fees), and claims arising out of the negligent acts, errors, or omissions of Contractor. Contractor's obligation to indemnify the Owner is not limited or waived in any way by compliance or non-compliance with the insurance requirements of this agreement; Contractor will be required to indemnify the Owner to the fullest extent allowed by law, regardless of whether Contractor has sufficient insurance to cover this obligation.

## **ARTICLE 10. GENERAL PROVISIONS**

**10.1** If conditions are encountered at the construction site which are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

## **ARTICLE 11. HAZARDOUS MATERIALS, WASTE AND ASBESTOS**

**11.1** Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the

specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Owner/Contractor to contract with a properly licensed and qualified hazardous material contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

## **ARTICLE 12. RESOLUTION OF DISPUTES**

**12.1** The provisions of this agreement shall be governed by and construed in accordance with the laws of the State of Utah. Venue for any legal action shall be in the 2nd District Court of the State of Utah.

## **ARTICLE 13. WARRANTY**

**13.1** At the completion of this project, Contractor shall execute an instrument to Owner warranting the project for one year against defects in workmanship or materials utilized. The manufacturer's warranty will prevail.

## **ARTICLE 14. TERMINATION OF THE CONTRACT**

**14.1** Should the Owner or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:

**14.1.1** If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and give the defaulting party 10 calendar days to cure the default. If the default is not cured within that time, the non-defaulting party may terminate the contract and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee. In the case of a defaulting Owner, the earnest money deposit herein mentioned shall be applied to the legally ascertained damages.

**14.1.2** Alternatively, in the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.

**14.1.3** In the case of a defaulting Owner, the Contractor may accept, at his option, the earnest money as shown herein as liquidated damages, and should earnest money not cover the expenses to date, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages applicable to the property less the earnest money.

## **ARTICLE 15. ATTORNEY FEES**

**15.1** In the event of any arbitration or litigation relating to the project, project performance or this contract, each party shall be responsible for its own attorney fees, costs and other expenses.

## **ARTICLE 16. ACCEPTANCE AND OCCUPANCY**

**16.1** Upon completion, the project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.

  
\_\_\_\_\_  
Contractor's Signature  
J Brad Barto

Date: 11-8-22

\_\_\_\_\_  
Owner's Signature  
BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY  
Scott K. Jenkins, Chair

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

ATTEST:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

Weber County Transfer Station Tunnel Liners Contract  
2022  
J Brad Barto Construction Inc.

# GENERAL CONDITIONS

For the Project: Weber County Transfer Station Tunnel Liners

Between the Owner: **Weber County**

And the Contractor: **J Brad Barto Construction INC**  
**2438 N 2950 W**  
**Plain City UT**

## ARTICLE 1. CONTRACT DOCUMENTS

1.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2 The term "work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services to be provided by Contractor to fulfill the Contractor's obligations. The work may constitute the whole or a part of the project.

1.3 The drawings, specifications and other documents furnished by the Contractor are instruments of service and shall not become property of the owner whether or not the project for which they are made is commenced. Drawings, specifications and other documents furnished by the Contractor shall not be used by the owner on other projects, for addition to this project or, unless the Contractor is in default of this contract, for completion of this project by others, except by written agreement relating to use, liability and compensation.

1.4 Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of the contractor's common law copyrights or other reserved rights. The Owner shall own neither the documents nor the copyrights, except as allowed or required by law.

## ARTICLE 2. OWNER

2.1 The Owner shall furnish all necessary surveys and a legal description of the site if needed.

2.2 Owner shall secure and pay for all necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

2.3 If the Owner observes or otherwise becomes aware of a fault or defect in the work or any nonconformity with the design or Construction Documents, the Owner shall give prompt written notice to the Contractor.

2.4 The Owner shall furnish required information and services and shall promptly render decisions pertaining thereto, to avoid delay in the orderly progress of the design and construction.

2.5 The Owner shall, at the request of the Contractor, provide a certified or notarized statement of funds available for the project and their source.

2.6 The Owner shall communicate with the subcontractors only through the Contractor.

2.7 The Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility.

### **ARTICLE 3. CONTRACTOR**

3.1 The Contractor shall supervise and direct the work, using the Contractor's best skills and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

3.2 Unless Contract Documents give other specific instructions concerning these matters, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

3.3 The Contractor shall enforce strict discipline and good order among the contractor's employees and other persons carrying out the contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4 The Contractor warrants to the owner that materials and equipment furnished under this contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted and that the work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modification not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5 Unless otherwise provided in the Contract Documents, the Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, and shall secure and pay for the building permit and other permits and Governmental fees, licenses and inspections necessary for proper execution and completion of the work.

3.6 The Contractor shall comply with and give notices required by laws, ordinances, rules and regulations, and lawful orders of public authorities bearing on performance of the work. The Contractor shall promptly notify the Owner if the drawings and specifications are observed by the contractor to be at a variance therewith.

**3.7** The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the work under a contract with the Contractor.

**3.8** Design services shall be performed by a qualified professional selected and paid by the Owner. The professional obligations of such persons shall be undertaken and performed in the interest of the Contractor. Construction services shall be performed by qualified subcontractors and suppliers, selected and paid by the Contractor. There shall be no professional obligation or contractual relationship between such persons and the Owner.

**3.9** The Contractor shall keep the Owner informed of the progress and quality of the work.

#### **ARTICLE 4. RELATIONSHIP OF BOTH PARTIES**

**4.1** The Contractor accepts the relationship of trust and confidence established by this agreement and covenants with the Owner to cooperate with the Owner and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials, and to perform the work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with the requirements of the Contract Documents.

#### **ARTICLE 5. UNKNOWN CONDITIONS**

**5.1** If conditions are encountered at the site which are:

(1) Subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents

(2) Unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the construction documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after the first observance of the conditions. The Owner will promptly investigate such conditions and will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

**5.2** If the Contractor wishes to make claim for an increase in the contract sum, written notice as provided herein shall be given to the Owner before proceeding to execute the work. Prior notice is not required for claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to:

(1) A written interpretation from the Owner

(2) An order by the Owner to stop the work where the Contractor was not at fault

(3) A written order for a change in the work issued by the Owner

(4) Failure of payment by the Owner

(5) Termination of the Contract by the Owner

(6) Owner's suspension



(7) Other reasonable grounds, claims shall be filed in accordance with the procedures established herein.

**5.3** If the Contractor wishes to make claim for an increase in the contract time, written notice as provided herein shall be given. The Contractor's claims shall include an estimate of cost and of probable effect of delay on progress of the work. In the case of a continuing delay, only one claim is necessary.

**5.4** If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**5.5** If either party to the contract suffers injury or damage to person or property because of an act or omission of the other party, or of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether insured or not, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in subparagraphs 5.2 and 5.3.

## **ARTICLE 6. CHANGES IN THE WORK**

**6.1** A Change Order is a written order signed by the Owner and the Contractor, and issued after execution of the contract, authorizing a change in the work or adjustment in the contract sum or contract time. The contract sum and time can only be modified by a change order.

**6.2** The Owner without invalidating the contract may order changes in the work within the general scope of the original contract consisting of additions, deletions or other revisions and the contract sum and contract time shall be adjusted accordingly. Such changes in the work shall be authorized by a change order, and shall be performed under applicable conditions of the contract documents.

**6.3** If the Owner requests the Contractor to submit a proposal for a change in the work and then elects not to proceed with the change, a change order shall be issued to reimburse the Contractor for any costs incurred for design services, bid preparation or proposed revisions to the contract documents, with the addition of a change in time.

**6.4** The Contractor shall be compensated for changes in the work necessitated by the enactment or revisions or codes, laws or regulations subsequent to the submission of the Contractor's proposal.

## **ARTICLE 7. TIME**

**7.1** The date of substantial completion of the work, or the portion thereof is the date certified by the Contractor when construction is sufficiently complete, in accordance with the contract documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended, as expressed in the contract documents.

## **ARTICLE 8. CORRECTION OF WORK**

**8.1** The Contractor shall promptly correct work failing to conform to the contract documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed and shall correct work found not to be in accordance with the requirements of the contract documents within a period of one year from the date of substantial completion of the contract or by terms of an applicable special warranty required by the contract documents. The provisions of this article apply to work done by subcontractors as well as to work done by direct employees of the Contractor.

**8.2** The Contractor shall complete the construction of the project to the dimensions of the construction documents; however there could be a variance in the field of up to 6", based on site conditions, materials used, or other encumbrances not known.

## **ARTICLE 9. TERMINATION OF THE CONTRACT**

**9.1** If the Owner fails to schedule a "Closing" with the Contractor on the work, for a period of 14 days after the certificate of substantial completion has been issued, through no fault of the Contractor, the Contractor may, upon 7 additional days written notice to the Owner, terminate the contract and recover from the owner payment for all work executed and for proven loss with respect to equipment, materials, tools and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the project.

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