

CONSTRUCTION AGREEMENT

Bid # 2020-14

Traffic Signal Improvements

THE STATE OF TEXAS § KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF DALLAS §

THIS CONSTRUCTION AGREEMENT is made and entered by and between **EAR Telecommunications LLC**, a **BUSINESS ENTITY** (hereinafter referred to as "Contractor"), and the **City of University Park, Texas**, a Home-Rule Municipal Corporation (hereinafter referred to as "City"), to be effective from and after the date hereinafter provided.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

ARTICLE I. CONTRACT DOCUMENTS

The parties agree that the Contract Documents shall consist of the following:

1. This written Construction Agreement;
2. The following listed and numbered addenda:
Addendum No. 1 Dated August 5, 2020
3. The Engineer's Specifications and the Project Drawings;
4. The General Conditions and Special Specifications;
5. The City of University Park's Standard Construction Details;
6. Requirements for workers' compensation coverage, prevailing wage rates and liability insurance;
7. The City's bid documents;
8. A Bid Bond in the sum of FIVE PERCENT (5%) of the total contract price;
9. A Performance Bond in the sum of ONE HUNDRED PERCENT (100%) of the

total contract price, which Bond shall be in a form acceptable to the City, shall guarantee the work in accordance with the plans and specifications for a period of one (1) year after acceptance by the City, and shall provide for repair or replacement of all defects due to faulty material and/or workmanship that appear within a period of one (1) year from the date of acceptance by the City;

10. A Payment Bond in the sum of ONE HUNDRED PERCENT (100%) of the total contract price;
11. A Maintenance Bond in the sum of ONE HUNDRED PERCENT (100%) of the total contract price, good for one (1) year after Final Acceptance from the City, and
12. The Contractor's bid.

These Contract Documents form the Construction Agreement and are a part of this Construction Agreement as if fully set forth herein. The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency in any of the provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above.

ARTICLE II. THE WORK

Contractor shall provide all labor, supervision, materials, and equipment necessary to perform all work required by the Contract Documents in connection with the **BID# 2020-14, Traffic Signal Improvements**.

ARTICLE III. LIQUIDATED DAMAGES

Contractor shall commence work within ten (10) calendar days after receiving Notice to Proceed from the City. Contractor agrees and covenants that all work hereunder shall be complete within **100 WORKING DAYS** following Notice to Proceed.

The time of completion is the essence of this contract. Because of the anticipated harm to the City for each calendar day that any work shall remain uncompleted after the time specified in the proposal and the contract, or the increased time granted by the Engineer, or as equitably increased by additional work or materials ordered after the contract is signed, the sum of **five hundred dollars (\$500.00)** for each calendar day that completion is overdue shall be deducted as liquidated damages from the monies due the Contractor:

The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per calendar day that the Contractor shall be in default after the time stipulated

in the contract for completing the work. The said amounts are fixed and agreed upon by and between the City and the Contractor because the harm caused by the delay, failure, or non-completion is incapable or difficult of estimation of the actual damages the City in such event would sustain; and said amounts are agreed to be a reasonable forecast of just compensation to the City and which shall be retained from the monies due, or that may become due, the Contractor under this contract; and if said monies be insufficient to cover the amount owing, then the Contractor or his surety shall pay any additional amounts due.

ARTICLE IV. INDEMNITY

CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES AND ENGINEER FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE PERFORMANCE OF THE CONTRACTOR'S WORK OR CAUSED BY THE NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONTRACTOR IS LEGALLY RESPONSIBLE (HEREINAFTER "CLAIMS"). CONTRACTOR IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS.

THE OBLIGATION OF THE CONTRACTOR UNDER THIS PARAGRAPH SHALL NOT EXTEND TO THE LIABILITY OF THE ENGINEER, HIS AGENTS OR EMPLOYEES ARISING OUT OF THE PREPARATION OR APPROVAL OF MAPS, DRAWINGS, REPORTS, SURVEYS, CHANGE ORDERS, DESIGNS, SPECIFICATIONS, OR THE GIVING OF OR THE FAILURE TO GIVE DIRECTIONS OR INSTRUCTIONS BY THE ENGINEER, HIS AGENTS OR EMPLOYEES, PROVIDED SUCH GIVING OR FAILURE TO GIVE IS THE PRIMARY CAUSE OF THE INJURY OR DAMAGE.

ARTICLE V. CONTRACT SUM

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Orders as provided in the Contract Documents. The contract sum shall be an amount not to exceed **\$594,671.10**.

ARTICLE VI. PROGRESS AND FINAL PAYMENTS

Progress and final payments shall be paid to the Contractor in accordance with the University Park General Conditions.

ARTICLE VII. CHOICE OF LAW, VENUE; CONTRACT INTERPRETATION

The parties agree that the law of the State of Texas shall apply to this Agreement, and that it is performable in Dallas County, Texas. Exclusive venue shall lie in Dallas County, Texas. Although this Agreement is drafted by the City, should any part be in dispute, the parties agree the Agreement shall not be construed more favorably for either Party.

ARTICLE VIII. ENTIRE AGREEMENT, AMENDMENTS SUCCESSORS AND ASSIGNS

This Construction Agreement, including the Contract Documents listed in Paragraph I herein above, represents the entire and integrated agreement between City and the Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Construction Agreement may be amended only by written instrument signed by both City and Contractor. This Construction Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE IX. EFFECTIVE DATE

The effective date of this Construction Agreement will be the date of approval by the City Council of the City of University Park, Texas

IN WITNESS WHEREOF, the parties have executed this Construction Agreement upon the year and date indicated beneath their signatures hereto.

CONTRACTOR

EARTC

By: _____

Title: Carlos Reyes / President

ATTEST: _____

Printed Name: Kian Stoupignan

OWNER

City of University Park

By: _____

Robbie Corder, City Manager

ATTEST: _____

Christine Green, City Secretary

APPROVED AS TO FORM

Robert L. Dillard III, City
Attorney
City Attorney