

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT FOR DONATED LABOR AND
MATERIALS FOR COUNTY HEALING GARDEN

This contract is entered into between the County of El Paso, a political subdivision of the State of Texas (“County”) and JAR Construction, Inc. (“Donor”) for donated labor or services and material to build a Healing Garden located at Ascarate Park in El Paso County, Texas relating to the August 3, 2019 mass shooting in El Paso, Texas. This contract shall be effective on the date executed by the last party to execute it.

WHEREAS, on August 3, 2019, twenty-two people were killed when a lone gunman opened fire in a retail establishment in El Paso, Texas; and

WHEREAS, the County is authorized under Local Government Code Chapter 316 to own and operate County parks, as well as County facilities located within such parks, for the benefit of the public; specifically, the betterment of the public’s mental and physical health; and

WHEREAS, the County owns and operates Ascarate Park and its facilities; and

WHEREAS, the County desires to offer a space for the community that honors the victims of the August 3, 2019 shooting and invites everyone to grieve, contemplate, reflect, and heal from that tragic event; and

WHEREAS, both the County and the Donor believe it is in the best interest of the public’s individual and collective mental health to have a designated space for the community to mourn and remember their loved ones; and

WHEREAS, the County offers a Healing Garden as shown in Exhibit A, to be located immediately after the entranceway in Ascarate Park, as a space for the community; and

WHEREAS, the Donor wishes to donate labor or services and materials to be used in constructing the Healing Garden and does so donate them without any expectation of compensation by the County; and

WHEREAS, the El Paso County Commissioners Court finds it is in the public’s best interest to construct, operate, and maintain a Healing Garden at Ascarate Park for the betterment of the community’s mental health, and further finds it is in the public’s best interest to accept donations of labor and materials to be used in constructing the Healing Garden; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree:

1. DOCUMENTS INCORPORATED BY REFERENCE. The above recitals and Exhibits A and B are fully incorporated by this reference for all purposes and shall be considered part of the agreement (all collectively with this contract, "Agreement"). This Agreement shall control if there is a conflict between the terms in the attachments and this Agreement.
2. INTENT AND INTERPRETATION. With respect to the intent and interpretation of this Agreement, the County and the Donor agree as follows:
 - (A) This Agreement constitutes the entire and exclusive agreement between the parties with reference to the Project, and said Agreement supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.
 - (B) Anything that may be required, implied or inferred by the documents which make up this Agreement, or any one or more of them, shall be provided by the Donor for the Agreement services and goods;
3. GOODS AND SERVICES. Donor shall provide the equipment and materials and perform the services, including provision of all labor, to complete the Project set forth in Exhibit A to the County's satisfaction. The goods and services to be provided by Donor are more fully outlined in Exhibit B. Services to be performed shall include but not be limited to the following: construction of the Healing Garden to be located off the roundabout directly following the entrance the County Ascarate Park located at 6900 Delta Drive, El Paso, Texas 79905 ("Project"). Any substantial changes to the Project design require written mutual consent.
4. INDEPENDENT CONTRACTOR. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee between the County and the Donor. The Donor shall be deemed at all times to be an independent contractor. The County shall not be subject to any obligations or liabilities of the Donor incurred in the performance of the Agreement.
5. PARTY REPRESENTATIVES. County's Representatives are County Civil Engineer Lidia Arias, County Public Works Director Norma Rivera Palacios, or any person designated in writing by Norma Rivera Palacios.

Donor's Representative is Project Manager Jose Pinon, Jr. If Donor replaces its representative, it shall inform Norma Rivera Palacios in writing within two (2) business days. An emailed notice is sufficient under this provision.

6. **NO COMPENSATION.** No public funds will be paid in whole or in part for the goods and services described in this Agreement. The goods and services are freely donated by the Donor solely for the public's best interest without any expectation of current or future monetary or nonmonetary payment, notwithstanding any non-monetary consideration mentioned below.
7. **CONSIDERATION.** As consideration for the donated services and goods, the County in its sole determination will place within the locality of the Healing Garden a plaque of reasonable size, placement, and decorum as befits a Healing Garden to acknowledge the donations received.
8. **NO UNDUE INFLUENCE.** The parties agree the County and its officials have not acted with undue influence, coercion, or impropriety in relation to the Donor's decision to donate its labor and materials.
9. **COMPLIANCE.** The Donor shall comply at all times with all federal, state, and local laws, rules, regulations, and orders. The Donor shall comply at all times with all applicable federal, state, and local agency guidelines and recommendations relating to employee and community health and safety, including but not limited to, recommendations and guidelines promulgated by the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC), the Texas Department of State Health Services, and the City of El Paso Health Authority.
10. **TIMELY COMPLETION.** Donor shall promptly begin work within one business day after a notice to proceed is issued by Owner's Representative. An emailed notice to proceed is sufficient. Donor shall make its best efforts, which includes but is not limited to working after hours and overtime, to satisfactorily complete the Project by or on August 2, 2020 and no later than November 30, 2020. "Completion" means the point at which the Project has reached full and final completion and no "punch-list" items remain pending and such that the Owner and the public may enjoy full and final beneficial use for the Project's intended purpose.
11. **REASONABLE ACCESS.** Donor will not interfere with the public's reasonable access of park roadways or park areas during its performance.

12. **INSPECTION.** The County has the right to inspect the Donor's performance, or that of its agents, at any time without advance notice. The inspections will be timely in relation to the Project mile stones and any feedback or concerns resulting from inspections will be promptly shared with the Donor.
13. **RIGHT TO SUSPEND.** The County shall have the right at any time to direct the Donor to suspend its performance, or any designated party thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the County, the Donor shall immediately comply.
14. **TERMINATION.** If the County repeatedly fails to perform its material obligations to the Donor for a period of ten (10) days after receiving written notice from the Donor of its intent to terminate, the Donor may terminate performance under this Agreement by written notice. The County may terminate this Agreement with or without cause by ten (10) days' written notice. In the event of termination by either party, the contract services are immediately suspended and any unused materials will remain the property of the County for use in building the Healing Garden.
15. **FORCE MAJEURE.** A Force Majeure Event is an unpredictable or unanticipated event that makes a Party's further performance under this agreement impossible. A Force Majeure Event means an Act of God; an epidemic, pandemic, or other natural disaster declared by a governmental authority with appropriate jurisdiction over the matter; governmental rules, regulations, or orders issued in response to an epidemic, pandemic, or natural disaster; civil disorder, disturbances, riots, or war; utility-related closings; or any similar event beyond the reasonable control of such Party. **Donor acknowledges the County Judge's authority to issue a disaster declaration under Texas law and waives any conflict of interest.**

The non-performing Party must give reasonably prompt written notice, to the other Party, of its inability to perform due to a Force Majeure Event, and such notice shall state the event and reason for such non-performance.

Notwithstanding any provision to the contrary in this Agreement, when an inability to perform has been declared under this paragraph, Donor shall immediately cease performance of the Project and take steps to ensure public safety by improving the worksite(s) to reasonably similar or better condition than when the Project began. Each Party is responsible for its own demobilization and storage costs under this provision. This paragraph 15 shall survive termination of the Agreement.

DONOR ACKNOWLEDGES AND AGREES THAT IT HAS READ THIS ENTIRE AGREEMENT, INCLUDING (WITHOUT LIMITATION) THIS PROVISION, AND HAS TAKEN APPROPRIATE MEASURES, AT ITS OWN EXPENSE, TO MITIGATE ITS OWN FINANCIAL RISKS UNDER THIS AGREEMENT. SUCH MITIGATION MAY INCLUDE (BY WAY OF EXAMPLE ONLY) THE PROCUREMENT OF A POLICY OF INSURANCE THAT MITIGATES DONOR'S RISK OF A FORCE MAJEURE EVENT AS DEFINED ABOVE

16. **WARRANTIES.** The Donor warrants that all labor furnished under this Agreement shall be competent to perform the tasks undertaken and be of workman-like quality, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Agreement. Any work not strictly complying with the requirements of this provision shall constitute a breach of the Donor's warranty. Donor shall extend the terms of any manufacturer's warranties to the County.
17. **DETRIMENTAL RELIANCE.** The County is providing the land and additional County resources for the Project in detrimental reliance of the Donor's commitment to satisfactorily construct and complete the Healing Garden by November 30, 2020.
18. **INSURANCE.** Donor will purchase General Liability Insurance for the term of this Agreement. The policy will include coverage for bodily injury and property damage liability combined, as well as coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, damage to rented premises, and medical payments with limits of liability as set forth below. All insurance policies will be written by an insurance company authorized to do business in Texas, and acceptable to the County. Donor is to be named as the insured, and County is to be named as an additional insured. Donor's insurance will include a waiver of subrogation. The insurance policy will also provide for thirty (30) days written notice to County prior to any material change or cancellation. Donor will furnish a copy of an insurance certificate to the County upon execution of this Agreement.

Commercial General Liability

Annual Aggregate Limit	\$ 2,000,000.00
Each Occurrence Limit	\$ 1,000,000.00

Products/Completed Operations—Aggregate	\$ 1,000,000.00
Personal & Advertising Injury	\$ 1,000,000.00
Damage to Rented Premises (each Occurrence)	\$ 100,000.00
Premises Medical Payments	\$ 5,000.00

19. INDEMNIFICATION. DONOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITIES OR LOSSES, INCLUDING ATTORNEY’S FEES, COURT COSTS, AND EXPERTS FEES, RESULTING FROM OR ARISING OUT OF OR CONNECTED WITH A FAILURE TO COMPLY WITH THIS AGREEMENT OR TORTUOUS OR UNLAWFUL ACT OR OMISSION BY DONOR OR DONOR’S AGENT OR EMPLOYEE. DONOR SHALL USE LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE COUNTY IN CARRYING OUT ITS OBLIGATIONS HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT.

IN ADDITION, DONOR SHALL LAWFULLY DISPOSE OF ALL WORK MATERIALS, CHEMICALS, AND DEBRIS AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL WORK MATERIALS, CHEMICALS, AND DEBRIS DONE BY DONOR OR ITS SUBCONTRACTOR IN FURTHERANCE OF THIS AGREEMENT.

20. ENTIRE AGREEMENT. This written Agreement shall constitute the entire agreement between the parties and shall not be amended or modified except in writing and executed by both parties to the Agreement and authorized by their respective governing bodies.

21. SEVERABILITY. If any part of this Agreement is held unenforceable, the rest of the Agreement shall continue in full force and effect to the extent that it substantially reflects the agreement contemplated by the parties.

22. WAIVER. No part of this Agreement shall be waived except by written waiver signed by the waiving party.

23. LAW GOVERNING AGREEMENT. This Agreement has been entered into and is performable in the County of El Paso, Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

24. ASSIGNMENT. The Agreement shall not be transferred or assigned in whole or in part by the Donor without prior written notice to and written consent of the County and may be enforced only by the parties.
25. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
26. CONFIDENTIALITY. The County is subject to the Open Meetings Act and the Public Information Act, Chapters 551 and 552, respectively, of the Texas Government Code, which may require disclosure of information notwithstanding any confidentiality provisions to the contrary in the governing terms and conditions.
27. ISRAEL. Pursuant to Texas Government Code Section 2271.002, if applicable, Donor verifies it does not boycott Israel and will not boycott Israel as defined in Section 2271.001(1), for the duration of the Agreement.
28. NOTICES. Notices shall be sent to the parties at the following addresses:

The County

Public Works Department
800 E. Overland, Suite 200
El Paso, Texas 79901
Attn: Lidia Arias, Civil Engineer
(915) 546-2015
larias@epcounty.com

Copy to:

Public Works Department
800 E. Overland, Suite 200
El Paso, Texas 79901
Attn: Norma Rivera Palacios, Public Works Director

The Donor

JAR Construction, Inc.

800 Escobar Drive
El Paso, Texas 79907
Attn: Jose Pinon, Jr., Project Manager/Senior Estimator
(915) 591-3389
jpinon@jarconcrete.com

IN WITNESS WHEREOF, the parties execute this Agreement:

JAR CONSTRUCTION, INC.

THE COUNTY OF EL PASO

Name: _____
Title: _____
Date: _____
(Signor must have authority to bind
entity)

County Judge Ricardo A. Samaniego
Date: _____

EXHIBIT A

Project Design

EXHIBIT B

Donations of Labor & Materials