

## **CONTRACT NO. ENG 23-3**

**THIS AGREEMENT** made this 7<sup>th</sup> day of February 2023, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (“City”) and **Landbridge Ecological Inc, 670 Vandalia Street, Saint Paul, MN 55114** (“Contractor”). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**1. CONTRACT DOCUMENTS.** The following documents shall be referred to as the “Contract Documents,” all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement.
- B. Instructions to Bidders.
- C. City of Edina General Contract Conditions.
- D. Addendum number 1.
- E. Special conditions.
- F. Special provisions.
- G. Technical Specifications.
- H. Plan sheets.
- I. Appendix A.
- J. Bid summary and schedule.
- K. Performance Bond.
- L. Payment Bond.
- M. Responsible Contractor Verification of Compliance
- N. Contractor’s Bid dated January 23, 2023.

The Contract Documents are to be read and interpreted as a whole. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work and to require Contractor to provide the highest quality and greatest quantity consistent with the Contract Documents. If there are inconsistencies within or among part of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirements.

- 1.1** Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the City for resolution before proceeding with the Work.
- 1.2** If a minor change in the Work is necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure to the City for approval before making the change.

The City shall not be required to make any adjustment to either the Contract Sum or Contract Time because of any failure by the Contractor to comply with the requirements of this paragraph. Actual or alleged conflicts or inconsistencies between

the Plans and Specifications or other Contract Documents shall be brought to the City's attention in writing, prior to performing the affected Work. The City's directions shall be followed by the Contractor.

**2. OBLIGATIONS OF THE CONTRACTOR.** The Contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.

**3. OBLIGATIONS OF THE CITY.** The City agrees to pay and the Contractor agrees to receive and accept payment in accordance with the Contractor's bid **\$315,423.42.**

**4. PAYMENT PROCEDURES.**

A. Contractor shall submit Applications for Payment. Applications for Payment will be processed by City as provided in the General Conditions.

B. Progress Payments; Retainage. City shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work.

C. Payments to Subcontractor.

(1) Prompt Payment to Subcontractors. Pursuant to Minn. Stat. § 471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor.

(2) Form IC-134 required from general contractor. Minn. Stat. § 290.92 requires that the City of Edina obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

D. Final Payment. Upon final completion of the Work, City shall pay the remainder of the Contract Price as recommended by City.

**5. COMPLETION DATE.**

The Work must be completed and ready for final payment by **December 31, 2025.**

**6. CONTRACTOR'S REPRESENTATIONS.**

A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface

structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.

- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. Subcontracts:
  - (1) Unless otherwise specified in the Contract Documents, the Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the City the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the City.
  - (2) The Contractor is responsible to the City for the acts and omissions of the Contractor's subcontractors, and of their direct and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of the Contractor's employees.
  - (3) The Contract Documents shall not be construed as creating any contractual relation between the City and any subcontractor.
  - (4) The Contractor shall bind every subcontractor by the terms of the Contract Documents.

**7. WARRANTY.** The Contractor guarantees that all new equipment warranties as specified within the bid shall be in full force and transferred to the City upon payment by the City. The Contractor shall be held responsible for any and all defects in workmanship, materials, and equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

**8. INDEMNITY.** The Contractor agrees to indemnify and hold the City harmless from any claim made by third parties as a result of the services performed by it. In addition, the Contractor shall reimburse the City for any cost of reasonable attorney's fees it may incur as a result of any such claims.

**9. MISCELLANEOUS.**

- A. Terms used in this Agreement have the meanings stated in the General Conditions.

- B. City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- C. Any provision or part of the Contract Documents held to be void or unenforceable under any 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 Documents 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 provisions.
- D. Data Practices/Records.
- (1) All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy.
- (2) All books, records, documents and accounting procedures and practices to the Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.
- E. Copyright/Patent. Contractor shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting there from. If the equipment provided by the Contractor pursuant to this Agreement contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, the Contractor shall pay all software licensing fees. The Contractor shall also pay for all software updating fees for a period of one year following cutover. The Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.
- F. Assignment. Neither party may assign, sublet, or transfer any interest or obligation in this Agreement without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.
- G. Waiver. In the particular event that either party shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Agreement by either party, whether of the same or any other covenant, condition or obligation.
- H. Governing Law/Venue. The laws of the State of Minnesota govern the interpretation of this Agreement. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Hennepin County.
- I. Severability. If any provision, term or condition of this Agreement is found to be or becomes unenforceable or invalid, it shall not affect the remaining provisions, terms and conditions of this Agreement, unless such invalid or unenforceable provision, term or condition renders this Agreement impossible to perform. Such remaining terms and conditions of the Agreement shall continue in full force and effect and shall continue to operate as the parties' entire agreement.
- J. Entire Agreement. This Agreement represents the entire agreement of the parties and is a final, complete and all-inclusive statement of the terms thereof, and supersedes and terminates any prior agreement(s), understandings or written or verbal representations made between the parties with respect thereto.
- K. Permits and Licenses; Rights-of-Way and Easements. The Contractor shall procure all permits and licenses, pay all charges and fees therefore, and give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements.

The Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

- L. If the work is delayed or the sequencing of work is altered because of the action or inaction of the City, the Contractor shall be allowed a time extension to complete the work but shall not be entitled to any other compensation.
- M. Responsible Contractor. This contract may be terminated by the City at any time upon discovery by the City that the prime contractor or subcontractor has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in Minn Stat. § 16C.285, subd. 3.

**CITY OF EDINA**

**CONTRACTOR**

BY: \_\_\_\_\_  
Its Mayor

BY: \_\_\_\_\_  
Its

AND \_\_\_\_\_  
Its City Manager

AND \_\_\_\_\_  
Its