

STATE OF TEXAS
COUNTY OF COLLIN

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**AGREEMENT FOR INSTALLATION OF
EARTHLOOP SYSTEM AT
ALLEN COMMUNITY ICE RINK**

This Agreement ("Agreement") is made by and between the City of Allen, Texas, a Texas home-rule municipality ("City"), and Trinity Boring Solutions Inc., an Oklahoma corporation, doing business as Texas Directional Boring ("Contractor") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, City owns the Allen Community Ice Rink located at 200 E. Stacy Road, #1350, in Allen, Texas ("Community Ice Rink"), with existing sub-floor heating and cooling systems that maintain the ice surface; and

WHEREAS, the existing sub-floor heating system at the Allen Community Ice Rink is damaged to the degree that immediate repair is needed to avoid damage to the sub-floor cooling system;

WHEREAS, City desires to install a new heat floor system under the existing failed system utilizing a directional boring method from the exterior of the building; 144 2-3/4" Poly Piping pairs ("Earth Loops") that will connect to an internal header system to be located under the concrete walk way on the players' bench side of the ice rink; and a stand-alone pump, heater and expansion tank in the existing mechanical room dedicated to the new heat floor system, (the "Project");

WHEREAS, City desires to enter this Agreement with Contractor for conducting work necessary to complete the Project, as set forth in Exhibit "A" (the "Scope of Work");

WHEREAS, pursuant to Section 252.022 of the Texas Local Government Code, the City Council of the City has determined that an emergency exists to preserve equipment and other property at the Community Ice Rink and to contract for the necessary repairs to the equipment of the Community Ice Rink;

NOW, THEREFORE, in consideration of the terms and conditions contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I Term

This Agreement shall commence on the last date of execution hereof ("Effective Date") and continue until completion of the work set forth in the Scope of Work, unless sooner terminated as provided herein.

Article II Scope of Work

2.1 Contractor shall perform the work for the Project pursuant to this Agreement as specified in the Scope of Work.

2.2 Contractor shall, prior to commencement of the work for the Project, provide a payment bond and a performance bond for the Project in forms satisfactory to the City to ensure completion of the Project in accordance with Chapter 2253, Texas Government.

Article III Devotion of Time; Personnel; and Equipment

3.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of work required under this Agreement, and shall be compensated for such additional services on a time and materials basis at a cost agreed between the Parties prior to the commencement of such additional work.

3.2 To the extent reasonably necessary for Contractor to perform the work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that Contractor may deem proper to aid or assist in the performance of the services under this Agreement. Contractor shall provide written notice to and approval from City prior to engaging services not referenced in the Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder, and shall not otherwise be reimbursed by City, unless otherwise provided herein.

3.3 Contractor shall furnish the labor, equipment and personnel necessary to perform the work required under this Agreement, unless otherwise provided herein.

3.4 Contractor shall submit monthly progress reports and attend progress meetings as may be required by City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project work during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

**Article V
Schedule of Work**

Contractor shall cause the Scope of Work to be completed within forty-five (45) days after receipt of the written Notice to Proceed from City.

**Article VI
Compensation and Method of Payment**

Contractor will be compensated a total amount not to exceed Two Hundred Sixty-Three Thousand Dollars (\$263,000.00) to be paid in four (4) installments, as set forth herein. City shall pay Contractor a sum of Sixty Thousand-Five Hundred Dollars (\$60,500.00) upon execution of this Agreement for the Scope of Work for Phase 1 set forth therein. City shall pay the Contractor an additional sum not to exceed Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) within thirty (30) days after receipt of a detailed, itemized invoice and City verification of the work and costs following the completion of Phase 2 of the Scope of Services. City shall pay the Contractor an additional sum not to exceed Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) within thirty (30) days after receipt of a detailed, itemized invoice and City verification of the work and costs following completion of Phase 3 of the Scope of Work. City shall pay the Contractor an additional sum not to exceed Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) within thirty (30) days after receipt of a detailed, itemized invoice and City verification of the work and costs following completion of Phase 4 of the Scope of Work.

**Article VII
Notice to Proceed**

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City.

**Article VIII
Warranties**

8.1 Contractor warrants that all materials and services provided under this Agreement are subject to all warranties arising by operation of law and additionally conform to the specifications imposed by City; all parts and materials are of a good marketable quality, of latest model and current date, exclude surplus remanufactured and used products unless so specified by City and are fit for the known purpose for which they are sold. Said warranty being in addition to any standard warranty or service guarantee given by Contractor to City.

8.2 Contractor shall provide the warranties for the work as set forth in the Scope of Work.

**Article IX
Additional Terms**

Time is of the essence with this Agreement.

Article X Termination

This Agreement may be terminated by:

- (a) mutual written agreement of the Parties;
- (b) upon written notice by either Party if the other Party breaches any of the term and conditions of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof;
- (c) upon written notice by City, if Company suffers an Event of Bankruptcy or Insolvency. For purposes of this Agreement "Event of Bankruptcy" shall mean the dissolution or termination (other than a dissolution or termination by reason of Company merging with an affiliate of Company) of Company's existence as a going business, insolvency, appointment of receiver for any part of Company's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company and in the event such proceeding is not voluntarily commenced by the Company, such proceeding is not dismissed within ninety (90) business days after the filing thereof; and
- (d) upon written notice by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year.

Article XI Miscellaneous

11.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings, written or oral agreements between the Parties with respect to this subject matter.

11.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of the City Manager of the City.

11.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.4 Governing Law. This Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in a State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

11.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties. The City Manager is authorized to execute any amendments or other instruments related to this Agreement.

11.6 Severability. In the event, any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

11.7 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period following the termination of this Agreement shall survive termination.

11.8 Recitals. The recitals to this Agreement are incorporated herein.

11.9 Independent Contractor. It is understood and agreed by and between the Parties that the Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

11.10 Insurance. Contractor shall during the term hereof maintain in full force and effect insurance policies as set forth in Exhibit "B".

11.11 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, SUB-CONTRACTORS, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR

SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

11.13 Exhibits. The exhibits attached hereto are incorporated herein.

11.14 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for the City:

City of Allen, Texas
Attn: Peter H. Vargas
City Manager
305 Century Parkway
Allen, Texas 75013

With Copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Contractor:

Trinity Boring Solutions Inc.,
dba Texas Directional Boring
6333 Mockingbird Lane, #147-513
Dallas, Texas 75214

(Signature Page to Follow)

EXECUTED on this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this 19 day of May, 2017.

TRINITY BORING SOLUTIONS INC.,
dba TEXAS DIRECTIONAL BORING

By: Tim Cohn
Tim Cohn
Title: _____

EXHIBIT A SCOPE OF WORK

I. Location of Project

All work shall be performed at the Allen Community Ice Rink located at 200 E. Stacy Road, #1350, in Allen, Texas. City has contracted with other vendors to provide materials and services for the Project. Contractor shall drill holes underneath the ice rink and install Earth Loops (as defined herein) in such holes which shall be connected to a new heater system to be installed by another City vendor. City has contracted with Golden State Hockey Rush, LLC ("GS") to provide the Earth Loops for the Project, to provide oversight of the Project and to provide and install the new heater system. Contractor shall cooperate with GS in the performance of its work required in the Scope of Services.

II. Scope of Work

Contractor shall bore and install 144 2 3/4 Poly Piping pairs (Earth Loops), to be provided and paid for by Golden State Hockey Rush, LLC that will connect to an internal header system to be located under the concrete walk way on the players' bench side of the ice rink. The header system (installed by GS) shall receive the new Earth Loops and carry a polypropylene glycol solution back to the existing mechanical room.

A. Project Timeline

1. Contractor shall cause its work to be completed within forty-five (45) days after the receipt of the Notice to Proceed from the City.

B. Project Phases & Work Schedule

1. Contractor shall perform the work for this Project in four (4) different phases to ensure the highest level of boring accuracy and efficiency while minimizing any customer or ice rink use inconveniences, including working overnight hours, if necessary.

2. The Phases for the Project are as follows:

Phase #1: Bore & Installation of 36 Earth loops
Phase #1 Cost: \$60,500.00
Paid on execution of this Agreement

Phase #2: Bore & Installation of 36 Earth loops
Phase #2 Cost: \$67,500.00
Paid at completion of Phase #2

Phase #3: Bore & Installation of up to 36 Earth loops
Phase #3 Cost: \$67,500.00
Paid at completion of Phase #3

Phase #4: Bore & Installation of up to 36 Earth loops
Phase #4 Cost: \$67,500.00
Paid at completion of Phase #4

III. Warranty

Contractor shall warranty all workmanship related to directional boring for a period of three (3) years after completion of the Work. All third-party manufacturer warranties shall apply for the Earth loops.

IV. Additional City Responsibilities

City shall be responsible for the cost and means to dispose of all landscaping, concrete demo and all other associated construction debris. City shall be responsible for all associated electrical work required for the pump & heater system.

EXHIBIT B
INSURANCE REQUIREMENTS

A. Contractor shall during the term of the Agreement maintain in full force and effect the following insurance:

(i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate for injury to persons (including death), and for property damage. Said policy must be on an occurrence basis, include a Medical Expense limit of \$10,000, Personal and Advertising Injury limit of \$ 1,000,000, Products and Completed Operations limit of \$1,000,000 aggregate, and Fire Damage, any one Fire limit of \$1,000,000;

(ii) policy of automobile liability insurance covering any vehicles owned, scheduled, hired, non-owned, and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;

(iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Contractor's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and

(iv) Umbrella Liability Insurance Policy with a limit of not less than \$2,000,000 each occurrence. Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall be provided on a "following form basis". Contractor waives all rights against the City Indemnitees for recovery of damages. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed Work, including its contractors, sub-contractors, consultants and employees.

B. All policies of insurance shall be endorsed and contain the following provisions:

(1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance, during and until completion of the Services;

(2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; and

(3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. Contractor shall provide written notice to the City of any material change of or to the insurance required herein.

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

D. A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to execution of the Agreement and upon request by the City.