

**CONSTRUCTION CONTRACT**

**BETWEEN**

**LAKE AMANDA WATER CONTROL AND IMPROVEMENT DISTRICT #1  
(LAWCID #1)**

**AND**

**[NAME OF CONTRACTOR]**

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## LAWCID #1 CONSTRUCTION CONTRACT

### CONSTRUCTION CONTRACT

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Lake Amanda Water Control and Improvement District #1 (LAWCID #1), herein referred to as "Owner", and \_\_\_\_\_ a company organized under the laws of the \_\_\_\_\_ with offices at \_\_\_\_\_, herein referred to as "Contractor", in consideration of the mutual covenants and the terms and conditions herein contained, enter into this contract (herein referred to as "Agreement") and agree to the following. (Owner and Contractor may each be referred to in this Agreement as "Party" or collectively as "Parties".)

#### 1.1. CONTRACT SERVICES

- (a) Contractor shall provide all equipment, fuel, labor, materials, supplies, permits and sub-contractor to fulfill all of the construction requirements as per the scope of work, plans and specifications set out in Exhibit B, Exhibit C, Attachments 1 through 6 and elsewhere in this agreement. If, at any time, Contractor is unable to fulfill these requirements Owner must be notified in writing within five (5) days. Contractor shall perform for Owner all related services as specified in this Agreement. All of the services to be provided hereunder by Contractor are hereinafter sometimes called the "**Contract Services**". Owner will pay contractor the sum as listed in Exhibit A as total compensation for the Contract Services ("Contract Amount").
- (b) Definitions:
- (1) *Project or Work* - The total construction to be performed under the Contract Documents in whole, or a part.
- (2) *Site* - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
- (3) *Substantial Completion* - The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- (4) *Contract Documents* - The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertains to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, the Specifications and the Drawings as the same are more specifically identified in this Agreement, together with all Written Amendments, Change Orders, and Engineer's Written interpretations and clarifications issued on or after the Effective Date of this Agreement. The reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Owner to Contractor are not Contract Documents.
- (5) *Engineer* – Purkeypile Consulting, LLC, or such other engineer or engineering firm designated by Owner.
- (6) *Owner Representative* – The person designated by Owner to be its representative on the site as provided in Section 7.2 below.

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## **1.2. MOBILIZATION AND DEMOBILIZATION**

- (a) Prior to mobilization of Contractor's equipment or materials. The Owner and Contractor shall agree to the date to commence mobilization within the construction commencement window listed in Exhibit A.
- (b) Contractor shall deliver all equipment and materials to the construction site as required to perform the work. Contractor is responsible for all permits required to transport their equipment. Owner will provide a staging area near to the dam during mobilization, construction and demobilization.
- (b) Upon completion Contractor shall demobilize all of their equipment, extra supplies, trash, sub-contractor equipment and ensure all environmental waste has been disposed of as per the laws of Texas.

## **1.3. FAILURE TO COMPLETE PENALTY**

Time is of the essence for the Work to be performed under this Agreement. Contractor shall have 120 calendar days to complete Phase 1 thru Phase 6 as detailed in Exhibit B.

Commencement shall start the day after the Contractor starts to mobilize the construction equipment unless otherwise agreed to by both parties.

The commencement day shall be agreed to by the Contractor and Owner's Representative. A commencement date document shall be signed by both parties with the commencement date noted.

Failure to complete the work through Phase 6 within 120 days from commencement date will result in a \$500.00 per day penalty for each day past 120 days. Total penalty amount will be liquidated damages and shall be deducted from the total Contract Price.

## **1.4. PERFORMANCE BOND**

Contractor shall provide a Performance Bond as prescribed by Texas law in the amount of the Contract Price.

## **1.5. RESPONSIBILITIES OF CONTRACTOR**

The entire performance, operation, management and direction of the equipment and the personnel furnished by Contractor shall be under the exclusive control and direction of Contractor, subject to Owner's right to give instructions and right of inspection and supervision. Contractor shall at all times be the final judge in determining whether or not the construction equipment and personnel are in all respects ready to undertake any contemplated operations under the then existing conditions and whether or not such operations can be safely undertaken or continued. In the event Contractor should consider it necessary to suspend operations at any time for safety reasons, Contractor shall immediately advise Owner of such fact and the reasons therefore.

## **1.6. DAILY REPORTS**

Contractor shall furnish Owner with a daily written report on a format approved by Owner of the daily construction activities, date, total days since commencement, daily cubic yards of soil removed from borrow site to dam and accumulative of same, two (2) pictures of construction activities, any soil compaction or cement testing results, important events or milestones, plans for the next days, safety or environmental incidents and any other information relative to said construction activities requested by Owner.

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### **1.7. MAINTENANCE OF CONTRACT EQUIPMENT**

Contractor shall ensure that the Contract Equipment is adequately maintained and shall be responsible for all maintenance, repairs and spare parts for the Contract Equipment. Contractor shall provide, store and maintain, at its cost, a readily available stock of maintenance and repair parts and operating supplies sufficient for the normal continuous operation of the Contract Equipment during the Specified Term in accordance with good construction practice.

### **1.8. LEGAL REQUIREMENTS**

Contractor shall, at its sole cost comply with the applicable laws of the Federal Government and State of Texas and apply for and obtain all necessary certifications, permits, registrations and licenses required to perform the work. As used in this Agreement, "Law" means any applicable statutes, rules, codes, regulations, decisions, proclamations, notices, directives, constitutions, instruments, rules of court, guidance, or any other instrument of any governmental, intergovernmental, or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organization having the force and effect of a law.

### **1.9. SUBCONTRACTING**

Contractor shall be responsible to Owner for work performed by its Subcontractors to the same extent it is responsible for activities performed by Contractor. Contractor shall ensure that its contracts with its Subcontractors contain provisions which are in conformity with and no less stringent than the provisions of this Agreement. No provision whatsoever of this Agreement will be deemed to create a contractual relationship between Owner and Subcontractor, nor between Owner and employees of Contractor or Subcontractor. Notwithstanding the provisions of this Agreement, any person or other entity not approved as a Subcontractor and used by Contractor to perform work shall be deemed a Subcontractor only for the purposes of Contractor's obligations and covenants under this Agreement and not for the purposes of any rights or benefits. Contractor shall, at Owner's request at any time, provide Owner with a list of all Subcontractors, if any, performing work.

### **1.10. CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- (a) Contractor shall not employ any Subcontractor, Supplier, or other individual or entity whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- (b) Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- (c) All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. The agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Owner's Representative, Contractor, Engineer, and all other individuals or entities identified to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or

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resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

### **2.1. SAFETY / HEALTH / ENVIRONMENT POLICY AND PROGRAMS**

Contractor shall be responsible for providing a healthy and safe work place and working environment for its employees and Subcontractors during performance of the Contract Services. Contractor shall protect the health and safety of Contractor's, Subcontractors' and Owner's personnel, the public, and other third parties from any danger associated with the Contract Services. All tools, equipment, facilities and other items used by the Contractor and its practices employed to perform the Contract Services are considered part of the working environment. As minimum health and safety requirements, Contractor shall be responsible for and shall ensure that all Contract Services is performed in compliance with any and all:

- Laws related to health and safety;
- Health and Safety requirements listed in Exhibit D;
- OSHA safety regulations, guidelines and practices.

### **2.2. MANNER OF CONDUCTING WORK AND FIRE HAZARD**

Contractor shall:

- (a) perform the Contract Services in a diligent, skillful and workmanlike manner and in strict compliance with the terms of this Agreement and in accordance with good construction practice;
- (b) take all measures necessary or proper to prevent, in the course of performing the Contract Services, pollution as a result of discharging or allowing to escape from the Contract Equipment any trash, fuel, waste oil, or other pollutant;
- (c) take all measures necessary or proper to provide safe working conditions and comply with OSHA safety regulations and with applicable regulations of the State of Operations;
- (d) not permit smoking or any open flames at or in the immediate vicinity of a hydrocarbon source;
- (e) define hazardous areas on the Construction Site and the vicinity thereof and mark with appropriate signs the areas approved for smoking and non-smoking.

### **2.3. PROHIBITED ITEMS AND SUBSTANCES**

Firearms, weapons, explosives, illegal drugs, drug paraphernalia, intoxicating beverages (alcohol) are not allowed on Owner's property.

### **2.4. ALCOHOL AND DRUG USE**

Contractor has adopted or will adopt its own policy to assure a drug and alcohol free workplace while performing work or services for Owner.

### **2.5. SAFETY, INCIDENT AND OCCUPATIONAL ILLNESS REPORTING**

Contractor shall report to Owner all incidents sustained by Contractor's or its subcontractors' personnel immediately when possible.

### **2.6. REMOVAL OF CONTRACTOR'S PERSONNEL**

In the performance of the Contract Services, Contractor shall maintain strict discipline and good order among its employees and the employees of its contractors and subcontractors, and may not

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permit any of them to engage in activities which Owner deems contrary or detrimental to Owner's interests. If Owner should request that any employee of Contractor or of a contractor or subcontractor of Contractor be removed from the Contract Services because such employee's continued relationship thereto could be detrimental to the performance thereof or is a source of concern to Owner, Contractor shall accede to such request and shall provide a replacement acceptable to Owner.

### **2.7. CONTRACTOR'S MEDICAL RESPONSE**

Contractor shall provide a first aid kit at the construction site. In the event an emergency evacuation of a person is require who is working for Contractor, transportation and treatment shall be arranged by Contractor or by Owner but the cost shall be for Contractor's account for Contractor's personnel evacuated. Contractor shall notify Owner immediately of all incidents requiring medical attention.

### **2.8. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE**

- (a) Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guidance hereunder excludes defects or damage caused by:
- (1) abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - (2) normal wear and tear under normal usage.
- (b) Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- (1) observations by Engineer;
  - (2) recommendations by Engineer or payment by Owner of any progress or final payment;
  - (3) the issuance of a certificate of Substantial Completion by Engineer or any payments related thereto by Owner;
  - (4) use or occupancy of the Work or any part thereof by Owner;
  - (5) any acceptance by Owner or any failure to do so;
  - (6) any inspection, test, or approval by others; or
  - (7) any correction of defective Work by Owner.
- (c) The Amanda Lake Dam TX03774 Plans and Specification written and certified on 04/14/2017 by Purkeypile Consulting, LLC, shall be followed precisely during the Construction Operations. If a deviation of these Plans and Specifications is required, the deviation must be approved by Purkeypile Consulting, TCEQ, and the LAWCID #1 President.



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- (d) It is the responsibility of the Contractor to review the Plans and Specifications a minimum of 10 days prior to execution of the various phases of the operation and if a deviation is noted the Contractor must notify the Owner's Representative immediately.

### **2.9. LIMITATIONS ON OWNER'S RESPONSIBILITIES**

The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

### **3.1. CONTRACTOR'S INDEMNITY**

Except as otherwise provided in this Agreement, Contractor shall be responsible for and shall defend, indemnify and hold harmless Owner and its officers, directors, agents, and representatives from and against any and all claims, demands, judgments and causes of action made, raised or asserted by any party for:

- (a) personal injury, including fatal injury and disease, damage or destruction of property, which arise out of or in connection with the Contract Services, to the extent such personal injury or such loss, damage or destruction of property is caused by the Contractor;
- (b) loss, damage or destruction of Contract Equipment or of any property owned, borrowed or rented by Contractor or any contractor or subcontractor of Contractor and used in the Contract Services, regardless of whether such loss, damage or destruction is caused by the fault, negligence or breach of contract by Owner;
- (c) loss, damage or destruction of the Lake Amanda dam itself or any portion thereof that would not have occurred but for the fault, negligence, or breach of contract of a member of Contractor, provided, however, that Contractor's liability to Owner shall be limited to repairing to the original condition prior to incident.

### **3.2. POLLUTION INDEMNITY**

Contractor shall indemnify, defend and hold Owner harmless from and against all damages, losses, liabilities, fines, penalties and costs arising out of or directly resulting from a hydrocarbon spill on account of a leaking fuel or oil containers, servicing equipment or refueling equipment arising out of the Contract Services performed under this Agreement, where;

- i) such damages, losses, liabilities, fines, penalties and/or costs result from the act of Contractor and/or
- ii) such damages, losses, liabilities, fines, penalties and/or costs result from the joint and/or concurrent acts of Contractor and/or subcontractor parties.

### **3.3. SCOPE OF INDEMNITIES**

- (a) Except as otherwise specifically provided herein, the indemnities provided for in this Agreement shall be applicable only between Owner and Contractor and do not create any affirmative rights in other parties.
- (b) The indemnities provided for in this Agreement shall include without limitation all fines, penalties, awards, and judgments; court and arbitration costs; legal fees; and other reasonable expenses associated with such claims, demands, and causes of action. A party hereto covered by an indemnity shall have the right at its own expense to participate in its own defense with legal representation of its own selection. Contractor shall notify Owner immediately of all accidents and/or losses related to the Contract Services and of all actual anticipated claims related to the Contract Services. Each party hereto shall be primarily responsible for investigating and handling claims based on losses for which it is responsible,

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but the parties hereto shall cooperate with each other in investigating and handling such claims.

### **4.1. INSURANCE**

Contractor shall at all times during the performance of the Contract Services provide, pay for and maintain in full force and effect with a responsible insurance carrier acceptable to Owner, the types and amounts of insurance specified in Exhibit E, attached hereto as part hereof, in a form satisfactory to Owner. The specified amounts and types of insurance coverage shall not in any way constitute or be construed as a limitation on Contractor's liability hereunder.

### **4.2. PROOF OF INSURANCE**

Contractor shall have its insurance carrier or carriers furnish Owner with certificates certifying that all insurance required of Contractor under this Agreement is in full force and effect and stating:

- (a) the effective start and expiration dates of all policies;
- (b) that the insurance will not be canceled or materially altered during the Specified Term without prior written notice in accordance with the policy provisions by registered mail to Owner.

### **4.3. SUBCONTRACTORS' INSURANCE**

Contractor shall require any subcontractors to maintain normal and customary insurance, but shall not require subcontractors to carry insurance that would duplicate the coverage of the insurance carried by Contractor. Upon request by Owner, Contractor shall require its subcontractors to furnish to Owner the same evidence of insurance required of Contractor hereunder.

### **4.4. OWNER'S RIGHT TO PROVIDE INSURANCE**

If Contractor neglects, fails or refuses to:

- (a) obtain and keep current the insurances specified in Exhibit E;
- (b) submit insurance certificates or copies of renewal certificates, or
- (c) make available for inspection by Owner the insurance policies specified in Exhibit and the receipts for current premiums;
- (d) then Owner shall have the right to procure any such insurances at Contractor's expense and to deduct the cost thereof from any sums that may be or become due to Contractor hereunder.

### **4.5. NOTICE OF POTENTIAL CLAIM**

Contractor shall give notice to Owner of all accidents as soon as possible, and in any event, not later than one (1) days after the event. In respect of serious occurrences (including, but not limited to, death or serious injuries or significant property damage) notice shall be immediate. In all cases, notices shall be confirmed in writing.

### **5.1. TAX RESPONSIBILITIES**

Contractor shall be responsible for and pay (or cause to be paid) when due all Taxes for which Contractor or Subcontractors are liable by reason of the performance of the Contract Services.

### **5.2. TAX INDEMNITIES**

In addition to the general indemnities, Contractor shall defend, indemnify and hold Owner harmless from liability to any competent authority resulting from Contractor's or Contractor's employees' or Subcontractor's failure to make timely payment of, or timely filings with respect to, any obligations to pay Taxes incurred in respect to the Contract Services. Such indemnities shall include all penalties and interest imposed in addition to the Taxes due as a result of Contractor's, Contractor's

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employees' or Subcontractor's failure to comply with reporting, filing, payment or procedural requirements. Contractor shall be liable for and shall indemnify Owner for any incremental withholding taxes imposed by an appropriate government entity or agency on payments to Contractor.

### **6.1. FORCE MAJEURE**

Except with respect to indemnities granted hereunder or payments required to be made hereunder, due fulfillment of the contractual obligations hereunder by either party hereto shall be suspended to the extent that and only so long as, despite such party's due care and diligence, performance is prevented by reason of Force Majeure. "**Force Majeure**" as used in this Agreement means earthquakes, lightning, explosion, hostilities, war (declared or undeclared), blockade, insurrection, civil commotion, acts of the public enemy, quarantine, restriction, epidemics, nationwide strikes, accident, riot, any act or failure to act of a government agency or local body, or any other cause beyond the reasonable control of the affected party and which could not by the exercise of reasonable diligence have been prevented or provided against, but specifically excluding financial distress. In case of suspension of work by reason of Force Majeure, the affected party shall promptly notify the other in writing and take all reasonable action required to resolve the situation.

If at any time Owner determines that the conduct of operations at Lake Amanda Dam may be unsafe due to security conditions, then Owner may declare Force Majeure.

### **6.2. TERMINATION FOR DELAY IN INITIATING WORK**

Owner may terminate this Agreement if the Contract Equipment is not delivered at the Mobilization Site on or between the commencement dates specified in Exhibit A, for the reasons attributable to the Contractor.

### **6.3. TERMINATION FOR INSOLVENCY OF CONTRACTOR**

In the event that Contractor becomes insolvent or makes an assignment for the benefit of creditors or files a voluntary petition of bankruptcy, or in the event that involuntary bankruptcy proceedings or receivership proceedings should be instituted against Contractor, Owner may terminate this Agreement.

### **6.4. TERMINATION IN CASE OF FORCE MAJEURE**

In the event of any occurrence of Force Majeure. Owner may terminate this Agreement upon three (3) days written notice to Contractor.

### **6.5. TERMINATION FOR DAMAGE OR LOSS OF CONTRACT EQUIPMENT**

If the Contract Equipment or an essential part thereof is damaged or lost for any reason and Contractor is not able or willing to repair or replace the same within a reasonable period of time acceptable to Owner, Owner may terminate this Agreement.

### **6.6. TERMINATION PRIOR TO CONSTRUCTION COMMENCEMENT**

Owner reserved the right to terminate this agreement prior to the commencement of contract service by given the Contractor five (5) days written notice and refunding to Contractor the Contractor's cost related to the Contractor's bid submittal.

### **6.7. CHANGE ORDERS**

The Amanda Lake Dam TX03774 plans and specification written and certified on 04/14/2017 by Purkeypile Consulting, LLC (Attachments 1, 2, and 6) shall be followed precisely during the construction operations.

If a deviation of these plans and specifications is required, the deviation must be approved by Purkeypile Consulting, LLC and the LAWCID #1 President.

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It is the responsibility of the Contractor to review the plans and specifications a minimum of 10 days prior to execution of the various phases of the operation and if a deviation is noted the Contractor must notify the Owner's Representative immediately.

A Change Order shall be written by the Contractor and Owner's Representative and approved by Purkeypile Consulting, LLC. All Change Order must be approved in writing by the LAWCID #1 President.

### **6.8. CHANGE OF CONTRACT PRICE**

The Contract Price may only be changed by a Written Amendment. Any claim for an adjustment in the Contract Price shall be made by written notice submitted by the party making the claim to the other party to the Contract and must be approved by both parties.

### **6.9. CHANGE OF CONTRACT TIME**

The Contract Time may only be changed by a Written Amendment. Any claim for an adjustment in the Contract Time shall be made by written notice submitted by the party making the claim to the other party to the Contract and must be approved by both parties.

### **6.10. OWNER MAY STOP THE WORK**

If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### **6.11. CORRECTION OR REMOVAL OF DEFECTIVE WORK**

Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

### **7.1. CONTRACTOR'S REPRESENTATIVES**

Contractor shall designate, in writing to Owner, the person or persons who will have supervisory authority over the construction operations and with whom Owner's representatives may coordinate the performance of the Contract Services. Contractor's representative will be in direct charge of the Contract Services and is empowered to act for Contractor in all matters relating to Contractor's performance of Contract Services and obligations hereunder. Notices concerning operations which are transmitted to Contractor through its designated representatives shall be deemed to have been sufficiently given for purposes of this Agreement.

### **7.2. OWNER'S REPRESENTATIVES**

Owner shall designate in writing one or more representatives in the area of operations to whom Contractor's representatives may deliver reports and other information developed from the Contract Services ("Owner's Representative"). Owner's Representative will consult with Contractor's representatives in the planning and coordination of the work and is empowered to act for Owner in all matters relating to Contractor's performance of the Contract Services, and to determine whether or

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not Contractor is performing the Contract Services in accordance with the provisions of this Agreement.

### **8.1. COMPENSATION TO CONTRACTOR**

- (a) Owner shall pay Contractor the percentage of the lump sum as listed in Exhibit A for each phase completed. Contractor may invoice the Owner upon completion of a phase after each phase completion is confirmed by Owner's Representative. Each invoice must be accompanied by a Lien Release in the form noted in Exhibit F.
- (b) The final invoice shall be accompanied (except as previously delivered) by:
  - (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required above;
  - (ii) consent of the surety, if any, to final payment; and
  - (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
- (c) In lieu of the releases or waivers of Liens specified in paragraphs 8.1. (a) and 8.1. (b) and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that:
  - (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and
  - (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

### **8.2. ADDITIONAL SERVICES**

- (a) Owner shall reimburse Contractor at the unit price for an additional service item listed in Exhibit A if service is requested by Owner in writing.
- (b) Contractor shall furnish Owner with sufficient documentation, acceptable to Owner, to substantiate the basis for any additional service reimbursement.

### **8.3. OBLIGATIONS TO THIRD PARTY**

- (a) Contractor shall promptly pay and completely satisfy all claims for labor, equipment, rentals and material employed or used by Contractor in connection with any and all Contract Services performed under this Agreement when those claims become due and payable. Contractor shall, provide satisfactory evidence to Owner that all of its employees and subcontractors have been paid in full for services performed. Contractor shall ensure that no liens of any kind are fixed upon or against the property of Owner by Contractor's employees, subcontractors, subcontractors' employees, suppliers or suppliers employees. Contractor shall indemnify, defend, protect and hold Owner harmless from all such claims and liens. Owner shall have all the following rights, without prejudice and in addition to any other rights and remedies provided in the Agreement or at Law, to protect itself from the aforementioned claims and liens.
- (b) If, at any time, there is evidence that Owner or any of its property might become liable for any claim or subject to any lien that is chargeable to Contractor, Owner may retain out of any payment then due Contractor under the Agreement or any such payment hereafter to become due, an amount sufficient to indemnify Owner completely against such claims and liens, including all of Owner's costs associated therewith. Owner may, upon giving advance notice

**LAWCID #1 CONSTRUCTION CONTRACT**

to Contractor, retain the amount withheld until Contractor delivers to Owner a complete release of the claims and liens that is satisfactory to Owner.

- (c) Owner may, at any time, require that Contractor post a bond, at no cost to Owner, to remove any claims or liens against Owner.
- (d) Owner may discharge or remove any claims or liens by bonding, payment or otherwise, all of which are chargeable to Contractor together with all legal costs, and Owner may deduct the amount of those claims, liens, and Owner's legal costs from payments made to Contractor.

**8.4. ADDRESSES FOR COMMUNICATIONS AND PAYMENTS**

Notices, invoices and other communications hereunder shall be deemed to have been properly given or presented and all payments properly made, if delivered in person or mailed or sent by registered mail or scanned and emailed, by one party to the other at the other's address indicated below or such substitute address as it may theretofore have indicated. However, invoices may be delivered in person or sent by mail.

<b>OWNER:</b>	<b>CONTRACTOR:</b>
<b>LAWCID #1</b> <b>ATTN: Kirwin Drouet (President)</b> <b>P. O. Box 420</b> <b>Colmesneil, Texas 75938</b>  <b>Mobile: 713- 816-1101</b> <b>Email: <a href="mailto:ricex@swbell.net">ricex@swbell.net</a></b>	

**9.1. ENTIRE AGREEMENT**

The Contract Documents, including the Plans and Specifications, exhibits and attachments hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and no other writing or conversation, including any terms or conditions submitted or referred to by Contractor when quoting for the Contract Services, will be considered a part of this Agreement unless evidenced by written instrument signed by both Owner and Contractor subsequent to the execution hereof.

**9.2. WAIVER**

All the original rights and powers of Owner hereunder shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement thereof and Owner shall not be deemed to have waived any of its rights or any provision of this Agreement or any notice given hereunder unless such waiver is in writing and no waiver by Owner of any breach by Contractor of this Agreement shall be deemed a waiver of any continuing or recurring breach.

**9.3. EXCLUSIVE REMEDIES**

Except as otherwise specifically provided in this Agreement, no right or remedy conferred upon or reserved to Owner by this Agreement or by law shall be exclusive of any other right or remedy provided herein or by law and all rights and remedies of Owner conferred by this Agreement or by law shall be cumulative and in addition to every other right and remedy available to Owner.

**LAWCID #1 CONSTRUCTION CONTRACT**

**9.4. SEVERABILITY**

If any one provision or group of provisions in this Agreement shall be held to be invalid, void, or of no effect for any reason whatsoever, such holding shall not be deemed to affect the validity of the remaining provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

**9.5. CONFLICT BETWEEN MAIN BODY, EXHIBITS, ATTACHMENTS**

In the event of a conflict or ambiguity between the foregoing main body of this Agreement, Exhibits and Attachments hereto and made a part hereof, the main body of this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in duplicate originals as of the date written below.

**CONTRACTOR**

**Lake Amanda Water Control and Improvement  
District #1**

**Signature** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

**EXHIBIT A - COMPENSATION& ADDITIONAL SERVICES**

1.0 CONSTRUCTION COMMENCEMENT **September 1, 2017 to October 15, 2017  
or as otherwise mutually agreed**

2.0 MOBILIZATION SITE **Lake Amanda Dam**

3.0 DEMOBILIZATION SITE

4.0 CONTRACTOR'S OFFICE

5.0 OWNER'S OFFICE

6.0 CONTRACTOR'S TO PROVIDE THE CONTRACT SERVICES & PERFORMANCE BOND FOR A LUMP SUM AMOUNT OF: \$ \_\_\_\_\_

7.0 OWNER SHALL PAY CONTRACTOR THE FOLLOWING PERCENT OF THE LUMP SUM LISTED BELOW UPON COMPLETION & CONFIRMATION OF EACH PHASE. PHASE DETAILS ARE LISTED IN EXHIBIT B.

7.1 PHASE 1: 5% OF LUMP SUM \$ \_\_\_\_\_

7.2 PHASE 2: 5% OF LUMP SUM \$ \_\_\_\_\_

7.3 PHASE 3: 24% OF LUMP SUM \$ \_\_\_\_\_

7.4 PHASE 4: 30% OF LUMP SUM \$ \_\_\_\_\_

7.5 PHASE 5: 17% OF LUMP SUM \$ \_\_\_\_\_

7.6 PHASE 6: 17% OF LUMP SUM \$ \_\_\_\_\_

7.7 PHASE 7: 2% OF LUMP SUM \$ \_\_\_\_\_

8.0 CONTRACTOR SHALL HAVE 120 DAYS TO COMPLETE PHASE 1 THROUGH PHASE 6. FAILURE TO COMPLETE IN 120 DAYS SHALL RESULT IN A \$500.00 PER DAY PENALTY FOR EACH DAY PAST 120 DAYS TO COMPLETE PHASE 1 THROUGH PHASE 6.

**ADDITIONAL SERVICES:**

1. 60% sand / 40% clay (SC, clayey sand) mixed, delivered and unloaded at construction site. Cost per cubic yard = \$ \_\_\_\_\_
2. Cemented modified soil (CMS) as per specification in Attachment 1 delivered, mixed and compacted at the construction site. Cost per cubic yard = \$ \_\_\_\_\_
3. Hourly Rate for on-site bulldozer (minimum D6 are equivalent size) and Operator, 12 hours maximum usage. Rate Per Hour = \$ \_\_\_\_\_



**EXHIBIT B - SCOPE OF WORK & CONSTRUCTION PHASES****Scope of Work**

Scope of work will include dam slope modifications, removal of emergency spillway, removal of drop inlet spillway, repair of all erosion areas, reconstruction of breached embankment, construction of concrete spillway, construction of boat ramp, restoration of borrow site and 12-month maintenance plan commencing from date of completion of Phase 6.

**Spillway Design and Dam Restoration**

The construction notes, plans, specifications and drawings developed and certified by Purkeypile Consulting, LLC on 4-14-2017 (Attachments 1, 2, and 6) shall be the primary detailed work scope document within the contract.

**Phases of Operation**

The phases of operation is a guideline of the various work task during the construction operations. The phases of operation is also used to determine the percent of lump sum payment due to the Contractor upon completion of a phase.

**Phase 1 (5%):**

- mobilize construction equipment
- set minimum of 6 survey benchmark
- validate the top of the drop inlet spillway to ensure the bench marks are correctly placed
- prepare borrow site (remove stumps and vegetation, remove topsoil, etc.)
- remove drop inlet spillway (can be placed to the southwest of the upstream buffer dam)
- remove 6" of soil from the upstream slopes (soil can be used for u/s buffer dam)
- install upstream buffer dam (use soil from slopes, downstream of buffer dam & borrow pit)
- set pumps and install hoses thru emergency spillway
- install tin sheets in bottom of bypass gulley to prevent further erosion

**Phase 2 (5%):**

- install downstream buffer dam/bypass road (use soil from borrow pit and between buffer dams)
- dig +/- 8' hole between buffer dams and set small pump
- commence pumping out water between buffer dam to allow soil to dry
- excavate dam slope on both sides of the spillway area (use this soil on upstream slopes)
- excavate 5' of soil underneath spillway and spillway basin area (use soil to fill bypass gulley)

**Phase 3 (24%):**

- fill breached area and commence soil compaction underneath spillway and spillway basin
- complete fill and compaction to desired depth prior to framing for pouring spillway concrete

**Phase 4 (30%):**

- frame for pouring spillway concrete and install re-bar
- pour all concrete for spillway
- install approach basin rip rap and spilling basin rip rap with cement grout

**Phase 5 (17%):**

- remove spillway framing boards
- install slide gate with work platform
- buildup and compact upstream dam slopes and dam crest
- install seeded TRM on dam slopes
- buildup and compact downstream slopes in areas with damage or erosion
- install chain link fence with gates on walls of spillway
- fertilize, lime and seed all dam slopes and dam crest
- install 1/2" depth of hay on all slopes with no grass and dam crest

**Phase 6 (17%):**

- level out downstream buffer dam
- remove pumps
- remove emergency spillway (place in lake south of u/s buffer dam)
- backfill and compact soil in area where emergency spillway was removed
- backfill and compact soil in bypass gulley
- install seeded TRM on backfill in bypass gulley
- fertilize, lime and seed area with no grass
- install concrete boat ramp
- restoration of borrow site and staging area
- demobilize equipment and all waste
- complete restoration of borrow site and drainage path back to old borrow site

**Phase 7 (2%):**

- complete 12 months maintenance plan

**EXHIBIT C - PLANS, SPECIFICATIONS AND RESPONSIBILITIES****Construction Plans & Specifications**

1. The construction notes, plans, and specifications contained within the attachments listed below shall be followed precisely by the Contractor during all phases of the construction operation and shall not be deviated from without obtaining approval from Purkeypile Consulting LLC, TCEQ, and Owner.
  - a. Attachment 1 (Plans 1-6 AmandaLakeDam 4-14-2017)
  - b. Attachment 2 (Plans 7-26 AmandaLakeDam 4-14-2017)
  - c. Attachment 3 (Product Data Sheets for Misc. Specifications)
  - d. Attachment 4 (Borrow Site Specifications)
  - e. Attachment 5 (Boat Ramp Specifications)
  - f. Attachment 6 (Addendum #1, Purkeypile Consulting, LLC Plans and Specifications)

**Other Plans and Specifications**

Contractor to provide all materials, labor and equipment to perform the following:

1. Install 4' high chain link fence onto the spillway side walls as detailed below:
  - Post to be mounted every 8' as a minimum
  - Post to be attached to top of concrete walls using factory mounts & screws for concrete installation
  - 2 lockable gates (3' wide gates) shall be install on the west side
  - 1 lockable gate (3' wide gate) to be installed on the east side
  - Chain link fence to be rust proof
  - Post and mounts shall be rust proof
  - Post caps to be installed on all post
  - Fence to extend down walls in both directions until top of spillway side walls are 4' above the ground elevation
  - Location of lockable gates will be determined by Owner's Representative
  - Add rustproof support brace on each end (4) of the chain link fence attached to the top of the last post, angled at 45 degrees, and secured to the top of the concrete side wall
2. Fertilize, lime, and seed dam slopes, dam crest and slopes areas with no grass, location of emergency spillway when removed and backfilled, and bypass gully when backfilled:
  - Fertilize and seed the above mentioned areas prior to the last soil compaction run
  - Fertilize with 300# per acre 13/13/13
  - Lime with 200# per acre pelletized lime
  - Seed with 30#/acre perennial rye grass, 15#/acre coastal Bermuda grass, 15#/acre Bahia grass, and 10#/acre subterranean clover
  - Ensure seeds are properly covered with top soil
  - Spread hay 1/2" thick across all seeded areas
3. 12 month maintenance plan to include the following and shall be checked every 3 months:
  - 12 month maintenance plan shall commence upon completion of Phase 6
  - Repair all areas on bypass gully, dam slopes and crest which have signs of erosions
  - Repair all areas on bypass gully, dam slopes and crest which have signs of subsiding
  - Inspect all areas of concrete spillway for cracks or signs of subsiding
  - Fill all cracks noted in concrete spillway with cement grout
  - Fertilize bypass gully, dam slopes and crest with 300# per acre 13/13/13 in mid- April
  - Lime bypass gully, dam slopes and crest with 200# per acre pelletized lime in mid-April
  - Seed bypass gully, dam slopes and crest with 30#/acre perennial rye grass, 15#/acre coastal Bermuda grass, 15#/acre Bahia grass and 10#/acre subterranean clover in mid-April

- Contractor shall provide dirt as required to repair all eroded or subsided areas
- 4. Borrow Site:
  - Contractor shall mix clay and soil as required to have a soil mix adequate for use on the dam and approved by the Owner's Representative
  - See other specification listed in Attachment 4
- 5. Boat Ramp:
  - See specifications listed in Attachment 5
- 6. Additional Soil Testing Requirements:
  - See additional soil compaction testing requirements listed in Attachment 6

### **Owner's Responsibilities**

Owner shall be responsible for the following:

1. Access to the dam, borrow site and staging area.
2. Soil for dam construction.
3. Easements as required.
4. Ensuring Contractor is in compliance with the contract.
5. Assist Contractor as required to clarify questions or concerns.

### **Contractor's Responsibilities**

Contractor shall be responsible for the following:

1. Provide all contract services as listed within this agreement.
2. Provide sufficient equipment and labor to perform the contract services in a timely matter.
3. Provide all of the materials which comply to the specifications required to perform the contract services.
4. Provide and install sliding gate in spillway with work platform as detailed in the specifications.
5. Provide third party services to conduct soil compaction test as per the specifications.
6. Provide third party services to conduct cement test as per the specifications.
7. Provide sufficient equipment and labor to simultaneously conduct work at the dam site and borrow site in a timely matter.
8. Provide all fuel and oil for equipment.
9. Provide sufficient pumps and hoses as required to transfer all water including rainfall from Lake Amanda above the upstream coffer dam, to the bypass gulley.
10. Provide spill pans or earthen berms lined with a solid sheet of 60 mil HDPE underneath all installed equipment (water pumps, etc.) located near a water source and all tanks used for fuel storage.
11. Provide 24 hour manning at transfer pumps during a heavy rainfall.
12. Provide a plan to bypass water from the lake in the event of a Hurricane or extremely heavy rainfall.
13. Provide a minimum of 1 sanitary facility at the dam construction site.
14. Provide a minimum of 1 sanitary facility at the borrow site.
15. Dispose of all waste generated during the contract services.
16. Maintain the county roads used by the Contractor while performing the contract services in such a matter to satisfy the County Commissioner.

17. Provide sufficient absorbent materials to cleanup a minor oils or fuel spill (less than 10 gallons).
18. Provide 1 large trash bin near to the construction site.
19. Remove tree which may be too close to the spilling basin area.
20. Provide water truck to reduce dust and wet fill as required to obtain desired compaction.
21. Provide rolls of plastic as required to cover the work area to prevent erosion due to excessive rainfall.
22. Provide SWPPP (Storm Water Pollution Prevention Plan) Permit from the TCEQ.
23. Ensure dam crest and east side road to dam is a minimum of 18' wide and a minimum height of 215' SL.
24. Remove and dispose of trees and brush if they are in the area required for the construction activities.

**EXHIBIT D - SAFETY, HEALTH AND ENVIRONMENTAL REQUIREMENTS**

Contractor shall:

- follow and comply to all OSHA rules and regulations in regards to construction activities
- follow and comply to the EPA, State and County rules and regulations on pollution prevention, waste disposal and pollution cleanup requirements
- notify the Owner in a timely matter of all safety, health or environmental incidents
- notify Owner prior to burning stumps, roots, brush, etc.
- wear hard hats when not inside an enclosed cab at the construction site
- wear sturdy work boots at construction site
- be diligent in ensuring waste materials do not blow off the work site onto adjacent property
- dispose of waste materials as quickly as possible when generated
- not exceed 10 mph on county road 3160, 3170, 3215 and 3216
- utilize water truck to reduce dust exposure to all
- wear florescent colored vest when working around moving equipment
- ensure all subcontractors follow the safety rules and regulations

**EXHIBIT E - INSURANCE**

1. Contractor to provide worker's compensation insurance for Contractor's employees engaged in the performance of this agreement.
2. Employer's liability insurance, if not provided by a Protection and Indemnity Policy, with limits as required by law but not less than \$1,000,000 per occurrence covering Contractor's employees engaged in the performance of this Agreement.
3. Contractor to provide comprehensive general liability insurance coverage and policy limits are at least \$2,000,0000 in coverage, whichever is greater, providing coverage for injury, death property damage including pollution liability resulting from each occurrence.
4. Contractor to provide auto and liability coverage in an amount not less than \$1,000,000.00.
5. Contractor's coverage shall include the Owner as an additional insured with a waiver of subrogation where applicable.

**EXHIBIT F - LIEN RELEASE**

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT:**

**Project: Restoration of Amanda Lake Dam**

The signer of this document has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for all labor, services, equipment, or materials furnished to the Project located at Amanda Lake Dam for Phase \_\_\_\_\_ listed in Exhibit A.

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the Project located at Amanda Lake Dam.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced Project in regard to the attached invoice.

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

Contractor Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



**ATTACHMENTS**

**ATTACHMENT 1 - PLANS 1-6 AMANDALAKEDAM 4-14-2017**

See electronic copy of Attachment 1

**ATTACHMENT 2 - PLANS 7-26 AMANDALAKEDAM 4-14-2017**

See electronic copy of Attachment 2

**ATTACHMENT 3 - PRODUCT DATA SHEET FOR MISC SPECIFICATIONS**

See electronic copy of Attachment 3

**ATTACHMENT 4 - BORROW SITE SPECIFICATIONS**

See electronic copy of Attachment 4

**ATTACHMENT 5 - BOAT RAMP SPECIFICATIONS**

See electronic copy of Attachment 5

**ATTACHMENT 6 - ADDENDUM #1, PURKEYPILE PLANS AND SPECIFICATIONS**

See electronic copy of Attachment 6