



Travis County Commissioners Court Agenda Request

Meeting Date: December 13, 2011

Prepared By/Phone Number: Jason G. Walker/44562; Marvin Brice, CPPB, Assistant Purchasing Agent

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: APPROVE CONTRACT AWARD FOR HOME REHABILITATION: PLAIN VIEW ESTATES WATER CONNECTIONS PROJECT, IFB NO. B110291-JW, TO THE LOW BIDDER, KEYSTONE CONSTRUCTION, INC. (TNR)

- Ø **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.
- Ø This project consists primarily of installing water service connections to twenty (20) existing homes in the Plain View Estates subdivision located in eastern Travis County.
- Ø This project is funded from the County's Housing and Urban Development (HUD) Community Development Block Grant Recovery (CDBG-R) grant.
- Ø Subject IFB opened on September 28, 2011, with four (4) bids received in response to the solicitation. TNR has reviewed the bids and recommends, and Purchasing concurs with the award of a contract to the low bidder Keystone Construction, Inc. for \$88,280.00.

The delay in submitting this contract award request before now is contributed to the American Recovery and Reinvestment Act of 2009 (ARRA) requirement that the contractor have a Data Universal Numbering System (DUNS) number and be registered with the Central Contractor Registration (CCR) system. On October 12, 2011 it was communicated to the County that Keystone Construction, Inc.'s registration had been completed, however, such registration did not

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

clear the CCR system where the County was able to verify such status until November 4, 2011.

Ø **Contract Expenditures:** Within the last N/A months \$0.00 has been spent against this contract/requirement.

Ø **Contract-Related Information:**

Award Amount: \$88,280.00

Contract Type: Construction

Contract Period: 60 working days from issuance of NTP

Ø **Contract Modification Information: N/A**

Modification Amount:

Modification Type:

Modification Period:

Ø **Solicitation-Related Information:**

Solicitations Sent: 18

Responses Received: 4

HUB Information: N/A

% HUB Subcontractor: 39.1%

Ø **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments: Draft contract attached. Signed originals to be delivered by contractor 12/2/11.

Ø **Funding Information:**

Purchase Requisition in H.T.E.: 512009

Funding Account(s): 662-4911-621-6099

Engineering Budget: \$80,600.00

Construction Budget: \$101,400.00

Misc Budget: \$25,050.00

Contingency: \$19,250.00

Comments: Budget verified through PBO by Jessica Rio, TNR's PBO analyst.

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TRANSPORTATION AND NATURAL RESOURCES

STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE, TNR



411 West 13th Street
Executive Office Building
PO Box 1748
Austin, Texas 78767
Phone: (512) 854-9383
Fax: (512) 854-4697

November 30, 2011

MEMORANDUM

TO: Cyd V. Grimes, C.P.M., Purchasing Agent
Marvin Brice, Assistant Purchasing Agent
FROM: *Steve Manilla*
Steve Manilla, P.E., County Executive, TNR/FM
SUBJECT: Award of Construction Services Contract

Home Rehabilitation: Plain View Estates Water Connections.
IFB No. B110291-JW
Contract No. 11K00291JW

Requested Agenda Item

TNR hereby requests that the Purchasing Department place the following item on the Commissions Court Agenda for a December 13, 2011 voting session:

Requested Motion: Consider and take appropriate action on the recommendation to award the construction contract for the Home Rehabilitation: Plain View Estates Water Connections project to Keystone Construction, Inc.

Project Description

The Plain View Estates Water Service Improvements project includes the installation of water service connections to 20 existing homes in the Plain View Estates subdivision located in eastern Travis County. The installation includes water service yard lines, pressure testing existing homes, connections to existing homes and water meters, re-vegetation and clean-up. The construction will follow the Uniform Plumbing Code established by the International Association of Plumbing and Mechanical Officials (IAMPO).

Summary and Recommendations

Commissioners Court approved the use of Housing and Urban Development (HUD) Community Development Block Grant Recovery (CDBG-R) funding for the design and installation of water service connections to eligible residences in the Plain View Estates Subdivision in Eastern Travis County. Sealed bids to construct the project were received from four bidders on September 28, 2011. The bids ranged from the low of \$88,280 to a high of \$230,400. Additional details and a recommendation are available in the attached letter from LNV Engineering (LNV), the

consultant hired to design this project. Upon tabulation and reviewing the bids, TNR finds the low bid at \$88,280 to be complete. Subject to Purchasing Department's findings of responsiveness, and in accordance with Chapter 262 (c) of the Texas government Code, TNR recommends that the low bidder, Keystone Construction, Inc. be awarded the contract for the construction of the Plain View Estates Water Connections project. The \$88,280 is encumbered under requisition number 512009. The commodity/sub-commodity code is 968/099. The account numbers are provided below:

Construction Services:

Account Number	Amount	Funding Source
662-4911-621-6099	- \$88,208 - \$88,280	HCHCU1

If you have any questions or require additional information please contact Lee Turner at 854.7598.

Attachments:

- Project Location Map
- LNV Letter of Recommendation
- Bid Summary
- TNR Budget Summary

NWT CC Jessica Rio, Planning and Budget Office
Sean O'Neal, County Auditor's Office
Christy Moffett, Health & Human Services
Jason Walker, Purchasing
Steve Sun, TNR
Lee Turner, TNR
Donna Williams-Jones, TNR
Brunilda Cruz, TNR

**TRAVIS COUNTY PURCHASING OFFICE
CONSTRUCTION CONTRACTS: BID TABULATION FORM**

BID DATE:	September 28, 2011
OPEN TIME:	2:00 PM
BIDS EXPIRE:	90 Days
BID NO.:	B110291-JW
DESCRIPTION:	Home Rehabilitation: Plain View
DEPARTMENT:	Estates Water Connections
CONTACT/NO.:	TNR
BIDS RECEIVED:	Lee Turner, P.E./47598
	4



BIDDER	BASE BID	Add Alt. 1	Add Alt. 2	Add Alt. 3	Addm	Bid Bond	Ethics	Cert. Sec.	Safety	HUB	Sub HUB %
Peabody	\$230,400.00					Y	Y	N/A	Y	Y	1.00%
Rangeland Services	\$105,000.00					Y	Y	Y	Y	N	25.80%
RGM	\$155,700.00				Y	Y	Y	Y	Y	N	1.00%
Keystone Construction	\$88,280.00				Y	Y	Y	Y	Y	N	37.97%

Print Name	SIGNATURE	Date
Jason G. Walker	<i>Jason G. Walker</i>	9/28/2011

DRAFT

STATE OF TEXAS §

COUNTY OF TRAVIS §

CONTRACT FOR CONSTRUCTION PROJECT of Home Rehabilitation: Plain View Estates Water Connections Project BETWEEN TRAVIS COUNTY AND KEYSTONE CONSTRUCTION, INC.

This Agreement is made and entered into this day by and between Travis County, Texas, a political subdivision of the State of Texas (the “County”) and Keystone Construction, Inc., (hereinafter referred to as the “Contractor”) and is binding upon their respective executors, administrators, heirs, successors, and assigns.

WHEREAS, Title XII of Division A of the American Recovery and Reinvestment Act of 2009, (Public Law 111-005, approved February 17, 2009) (“ARRA”) appropriated funds to be distributed to cities, counties, insular areas and states to carry out and implement eligible activities under the federal Housing and Community Development Act, 42 U.S.C. § 5301 *et seq.*, as amended, on an expedited basis (“the CDBG-R” Program”);

WHEREAS, the County, through its Health and Human Services/Veterans Services Department (“the Department”), has entered into an agreement with the United States Department of Housing and Urban Development (“HUD”) under which HUD has made a grant of funds appropriated under ARRA to the County as a “grantee” to be used for the operation and administration of a CDBG-R Program within Travis County;

WHEREAS, the County has received certain funds from the U. S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.A. 5301 *et seq.* (hereinafter referred to as “the Community Development Act”) for utilization in connection with its community development block grant fund operating budget (hereinafter referred to as “Grant Fund”) for community development services;

WHEREAS, the County desires to enter into a contract for the construction of **Home Rehabilitation: Plain View Estates Water Connections Project** in Travis County, Texas, in accordance with the provisions of state and federal regulations and conforming to the Contractor’s Notice of Construction, Bid Proposal, Specifications and Plans marked **Home Rehabilitation: Plain View Estates Water Connections Project (IFB NO. B110291-JW)**, all of which are hereby incorporated by reference as if fully copied and set forth herein at length;

WHEREAS, the Contractor has been engaged in and now does comparable work and represents that it is fully equipped, competent and capable of performing the above desired and outlined work, and is ready and willing to perform such work in accordance with all provisions of the above mentioned documents, Specifications and the Plans marked (IFB NO. B110291-JW).

NOW THEREFORE, in consideration of the County’s promise to pay the amount below as totaled in the Bid Proposal hereto attached and made part of this Contract, the Contractor agrees to do at his own proper cost and expense all the work necessary for the construction of, **Home Rehabilitation: Plain View Estates Water Connections Project** in Travis County, Texas, in accordance with the provisions of the aforementioned Contractors' Notice of

Construction, the Bid Proposal as awarded by the Commissioners Court, and the Specifications and Plans marked (IFB NO. B110291-JW), and the terms, conditions, and provisions of this Contract, to the satisfaction of the County Executive of the Transportation and Natural Resources Department of Travis County, Texas.

1. Entire Agreement. This contract document, the Contractor's Notice of Construction, the Bid Proposal, and the Specifications and Plans marked (IFB NO. B110291-JW) including all Exhibits and 18 Attachments thereto represent the entire and integrated Contract between the County and the Contractor and supersede all prior negotiations, representations, or agreements, either oral or written.
2. Completion of Project. The said Contractor further agrees to be available for work within 14 calendar days, and to complete the work within 60 working days, after receiving a written "Notice to Proceed", approved by the County Executive and the County Purchasing Agent. The Contractor warrants that the completed project will be adequate for the purposes intended.
3. Consideration. Travis County, Texas, in consideration of the full and true performance of the said work by said Contractor in accordance with this Contract, hereby agrees and binds itself to pay to said Contractor the total contract amount of \$88,280.00, consisting of \$_____ for materials to be incorporated into the Project or completely consumed at the job site and services required by or integral to the performance of the contract and \$_____ for all other charges, including the cost of other services, overhead, materials which do not become part of the finished project or are reusable, and machinery or equipment and its accessory, repair, or replacement parts, and in the manner provided for, within 30 calendar days from the receipt of an acceptable invoice. This division of the Contract amount is made to reflect the sales tax purposes only. Contractor must maintain internal records to verify the division. The Contractor must make these records available upon request of the Travis County Auditor. This Section 3 is subject to any applicable federal requirements.
4. Choice of Law/Venue. This contract will be construed according to the laws of the State of Texas and the United States of America. The performance for this Contract will be in Travis County, and venue for any action will lie in Travis County, Texas.
5. Outstanding Debt.
 - 5.1 Assignment for Taxes. Notwithstanding anything to the contrary herein, if Contractor is delinquent in payment of taxes within Travis County at the time of invoicing, Contractor hereby assigns any payments to be made for service rendered under this Contract to the Travis County Tax Assessor-Collector for the payment of said delinquent taxes, and authorizes County to transfer those funds directly to the Travis County Tax Assessor-Collector. The terms of this Section 5.1 apply only insofar as allowed by the Grant.
 - 5.2 Disbursements to Persons With Outstanding Debt.
 - 5.2.1 Disbursements to persons with certain outstanding debt is prohibited by Section 154.045 of the Texas Local Government Code.

- 5.2.2 If notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of Contractor to the State, the County or a salary fund, a warrant may not be drawn on a County fund in favor of the Contractor, or an agent or assignee of Contractor until:
- 5.2.2.1 the County Treasurer notifies the Contractor in writing that the debt is outstanding; and
- 5.2.2.2 the debt is paid.
- 5.2.3 “Debt” as used in this Section 5.2 includes delinquent taxes, fines, fees and indebtedness arising from written agreement with the County.
- 5.2.4 The County may apply funds the County owes the Contractor to the outstanding balance of debt for which notice is made under Section 5.2.2 above if the notice includes a statement that the amount owed by the County to the Contractor may be applied to reduce the outstanding debt.
- 5.3 Payment of Taxes. Contractor agrees that neither federal, state, nor local income tax, nor payroll tax of any kind will be withheld or paid by County on behalf of Contractor or the employees of Contractor. Contractor will not be treated as an employee with respect to the services performed under the terms and conditions of this Contract for federal and state tax purposes. Contractor accepts responsibility for the compensation of employees, withholding and payment of taxes, and for purchasing any liability, disability or health insurance coverage deemed necessary by Contractor. Contractor understands that Contractor is responsible to pay, according to the law, Contractor’s income tax. If Contractor is not a corporation, Contractor further understands that the Contractor may be liable for self-employment (social security) tax, to be paid by Contractor according to law.
- 5.4 Non-delinquency on Federal Debt. Contractor, by signing this Contract, certifies that Contractor is not delinquent in repaying any Federal debt; has not been judged to be in default on a Federal Debt; and has not had a judgment lien filed against it as a result of a Federal debt. Failure to maintain this status will result in action by County up to and including termination of this Contract.
- 5.5 Taxes. County is not liable for state, local, or federal excise taxes of Contractor. Contractor must be able to demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2’s to common law employees. The Contractor is responsible for both Federal and State Unemployment insurance coverage and standard Workers’ Compensation Insurance coverage. Contractor must comply with all Federal and State tax laws and withholding requirements. County will not be liable to Contractor or its employees for any Unemployment or Workers’ Compensation coverage, or Federal or State withholding requirements.
6. Amendment. This Contract may be amended only by written instrument signed by both the County and the Contractor and subject to the approval of the U.S. Department of Housing and Urban Development (“HUD”) for any amendment involving any budget revision(s) which would result in the need for additional funds. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY

AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT OF THE COUNTY.

7. Notice.

7.1 Manner. Any notice to be given under this Contract must be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

COUNTY:

Cyd Grimes, C.P.M. (or successor)
Travis County Purchasing Agent

Hand Delivery:

700 Lavaca Street, Suite 800
Austin, Texas 78701

Registered or Certified Mail (Return receipt requested):

P. O. Box 1748
Austin, Texas 78767

Copy To:

Steven M. Manilla, P.E., County Executive (or successor)
Travis County Transportation and Natural Resources Department
P.O. Box 1748
Austin, Texas 78767

CONTRACTOR:

Keystone Construction, Inc.
P.O. Box 90398
Austin, TX78709
Larry Vinklerek, Vice-President

7.2 Effect. Notice by personal delivery or hand delivery will be deemed effective immediately upon delivery, provided notice is given as required by Subsection 7.1 hereof. Notice by registered or certified mail will be deemed effective 3 days after deposit in a U.S. mailbox or U.S. Post Office.

7.3 Change of Address. Either party hereto may change its address by giving notice as provided herein.

8. Forfeiture of Contract.

8.1 Forfeiture. Contractor must forfeit all benefits of the Contract and County must

retain all performance by Contractor and recover all consideration or the value of all consideration paid to Contractor pursuant to the Contract if:

8.1.1. Contractor was doing business at the time of submitting its bid or had done business during the 365-day period immediately prior to the date on which its bid was due with one or more Key Contracting Persons listed in Exhibit A to the Ethics Affidavit which is attached to IFB No. B110291-JW and incorporated by reference therein as Exhibit A (both contained in Attachment 4 thereto); or

8.1.2 Contractor does business with a Key Contracting Person after the date on which the bid that resulted in this Contract is submitted and prior to full performance of this Contract.

8.2 Definition. "Is Doing Business" or "Has Done Business" mean:

8.2.1 paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or purchase of any property interest, either real or personal, either legal or equitable, or

8.2.2 loaning or receiving a loan of money, services or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$2500 in the aggregate in a calendar year;

8.2.3 but does not include:

8.2.3.1 any retail transaction for goods or services sold to a Key Contracting Person at a posted, published or marked price available to the general public;

8.2.3.2 any financial services product sold to a Key Contracting Person for personal, family or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Contractor in the ordinary course of its business; or

8.2.3.3 a transaction for a financial service or insurance coverage made on behalf of Contractor if Contractor is a national or multinational corporation by an agent, employee or other representative of Contractor who does not know and is not in a position that he or she should have known about the Contract.

8.3 Waiver. The forfeiture provisions of the contract imposed pursuant to the Travis County Ethics Policy may be waived in whole or in part by the Travis County Commissioners Court.

9. Contract Construction.

9.1 Gender and Number. Words of any gender in this Contract will be construed to include the other, and words in either number will be construed to include the other,

unless the context in this Contract clearly requires otherwise.

9.2 Headings and Titles. Headings and titles at the beginning of this Contract, including all Exhibits and Attachments hereto, have been included only to make it easier to locate the subject matter covered by that part, section or subsection and will not be used in construing this Contract.

9.3 Computation of Time. Whenever any period of time is stated in this Contract, the time will be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that Travis County has declared a holiday for its employees, these days may be omitted from the computation. All hours stated in this Contract are stated in Central Standard Time or in Central Daylight Savings Time, as applicable. Contractor may obtain a copy of Travis County's holiday schedule from the Purchasing Agent.

9.4 Interpretation. Provisions, words, phrases, and Texas statutes and regulations, whether incorporated by actual use or reference into this Contract, including all Exhibits and Attachments hereto, will be construed in accordance with Chapters 311 and 312 of the Texas Government Code. Provisions, words, phrases, and federal statutes and regulations, whether incorporated by actual use or reference, will be applied to this Contract, including all Exhibits and Attachments hereto, in accordance with applicable federal regulations and guidelines.

10. Severability. The provisions of this Contract are severable. If any clause, sentence, provision, paragraph, or article of this Contract, including the Exhibits and Attachments hereto, or the application of this Contract, including the Exhibits and Attachments hereto, to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability will not impair, invalidate, nullify, or otherwise affect the remainder of this Contract, including the Exhibits and Attachments hereto, but the effect thereof will be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances will not be affected.

11. Sovereign Immunity. The parties expressly agree that no provision of this Contract, including the Exhibits and Attachments hereto, is in any way intended to constitute a waiver by Travis County of any immunities from suit or liability that County may have by operation of law and, Travis County hereby retains all of its affirmative defenses.

12. Compliance with Applicable Law.

12.1 The Contractor must comply with all applicable federal, state, and local laws, regulations, and ordinances related in any way to this Contract. The Contractor must notify the County in writing of any failure to comply with such laws, regulations, or ordinances, where such failure affects in any way the Contractor's ability to provide service(s) under this Contract. This Paragraph will be construed in conjunction with Paragraph 7.1 (entitled "Laws to be Observed") of IFB No. B110291-JW.

12.2 Without limiting the foregoing, Contractor must comply with the following statutes and regulations:

- 12.2.1 Workers Compensation laws;
- 12.2.2 Minimum and maximum salary and wage statutes and regulations, including but not limited to:
- (A) Fair Labor Standards Act of 1938, as amended;
 - (B) Equal Pay Act of 1963, PL 88-38;
 - (C) the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5);
 - (D) compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5); and
 - (E) all other applicable regulations implementing the above laws.
- 12.2.3 Non-discrimination statutes and regulations, including but not limited to:
- (A) Title VII of the Civil Rights Act of 1964, as amended;
 - (B) Section 504 of the Rehabilitation Act of 1973, as amended;
 - (C) The Age Discrimination Act of 1975, as amended; and
 - (D) all applicable regulations implementing the above laws;
- 12.2.4 All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857h), Section 508 of the Clean Water Act (33 U.S.C. § 1368), and Executive Order 11738;
- 12.2.5 Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et. seq.;
- 12.2.6 National Environmental Policy Act (“NEPA”) including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable HUD regulations set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects;
- 12.2.7 24 C.F.R. Section 5.105, including all applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein; and
- 12.2.8 All applicable CDBG regulations.
- 12.3 [PROVISIONS APPLICABLE TO COVERED PROJECTS FOR WHICH AMOUNT OF HUD ASSISTANCE EXCEEDS \$200,000 AND THE CONTRACT OR SUBCONTRACT EXCEEDS \$100,000.]
- 12.3.1 The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, will to

the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- 12.3.2 The parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- 12.3.3 The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice must describe the Section 3 preference, must set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work must begin.
- 12.3.4 The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- 12.3.5 The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.
- 12.3.6 Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- 12.4 When required, Contractor must furnish the County or HUD with satisfactory proof of its compliance herewith.
13. Name and Ownership. Contractor remains responsible for the performance of this Contract, including all Exhibits and Attachments hereto, when there is a change of name or change of ownership, other than an outright sale of Contractor's business such that Contractor, including its officers and executives, is no longer involved in the business's operations. If a change of name or ownership occurs, Contractor must immediately

notify the County Purchasing Agent. No change in the obligations of or to Contractor will be recognized unless or until it is approved by the Travis County Commissioners Court.

14. Payments.

14.1 Each payment made hereunder must be allowable under Title 24 C.F.R. Section 85.22, and 2 C.F.R. Part 225 (including Appendices A and B thereto) and applicable provisions of Appendices C, D and E thereto), and must be consistent with this Contract including the Exhibits and Attachments hereto. Payment will be made by check or warrant upon satisfactory delivery and acceptance of items and submission of a Correct and Complete invoice to the address below for orders placed by the Purchasing Agent, or to the address indicated on Purchase Orders placed by other authorized County offices and/or departments. Invoices must be submitted to:

Transportation and Natural Resources Department
P.O. Box 1748
Austin, Texas 78767

14.2 In addition to the information required under Subsection 9.5 of IFB No. B110291-JW, a "Correct and Complete" invoice must include at least the following:

14.2.1 Name, address, and telephone number of the Contractor and similar information in the event payment is to be made to a different address;

14.2.2 County Contract, Purchase Order, or Delivery Order number,

14.2.3 identification of items or services as outlined in this Contract;

14.2.4 quantity or quantities, applicable unit prices, total prices, and total amount;
and

14.2.5 any additional payment information which may be called for by this Contract including documentation appropriate to the nature of the activity.

The Contractor must also submit a statement with each invoice showing the percentage completion of the work accomplished during the preceding 30-day period and the percentage completion to date, as well as any additional written information requested by the County to document the progress of the work.

14.3 Payments made under this Contract are subject to the cost principles set forth in Title 24 C.F.R. Section 85.22, and 2 C.F.R. Part 225 (including Appendices A and B thereto and applicable provisions of Appendices C, D and E thereto). In addition, this Contract is subject to the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. In the event of a clear conflict between Titles 24 C.F.R. Section 85.22 and 2 C.F.R. Part 225, and the Prompt Payment Act, applicable provisions of Titles 24 C.F.R. 85.22 and 2 C.F.R. Part 225 will control.

- 14.4 The Contractor must pay its subcontractors for satisfactory performance of their contracts, no later than 10 days from the Contractor's receipt of payments from County hereunder. The Contractor must promptly make full payment of any and all retainage to subcontractors within 30 days after subcontractor's work is satisfactorily completed. Contractor must complete and submit with each monthly invoice the Form titled "Travis County HUB Subcontractor Payment Report" contained in Attachment 8 as prescribed therein.
- 14.5 Contractor must complete and submit other forms and reports, as required, including the forms and reports set forth in Attachment 8 and other forms and reports required by the County for compliance with HUD regulations.
- 14.6 All payments under this Section 14 are subject to Paragraphs 5.16 (entitled "Final Payment") and 9.6 (entitled "Acceptance and Final Payment") of IFB No. B110291-JW
15. Successors and Assigns. Upon County's execution of this Contract, including all Exhibits and Attachments hereto, the provisions of this Contract shall be binding upon and inure to the benefit of Travis County and Keystone Construction, Inc. and their respective successors, executors, administrators, and permitted assigns.
16. CERTIFICATION OF ELIGIBILITY TO RECEIVE FEDERAL FUNDS/DEBARMENT CERTIFICATIONS.
- 16.1 Certification under this Section provides for compliance with certification requirements under 24 C.F.R. Part 84.13(a) and 24 C.F.R. Part 24. Contractor, by signing this Contract, hereby certifies that, to the best of its knowledge and belief, it and its principals:
- 16.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- 16.1.2 have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 16.1.3 are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b); and
- 16.1.4 have not within a three year period preceding this Contract had one or more public transactions (Federal, State or local) terminated for cause or default.

- 16.2 Where Contractor is unable to certify to any of the statements in this Section, Contractor must provide an explanation of such inability prior to the effective date of this Contract for County's consideration and evaluation with the understanding that such may result in termination of this Contract by County.
 - 16.3 In the event of placement on the list between the time of bid/proposal/statement submission and time of contract award, the bidder/proposer must immediately notify the Travis County Purchasing Agent.
 - 16.4 Placement of the Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify County as required in this Subsection may result in County's termination of this Agreement for default.
 - 16.5 The Contractor must provide to the County the certification in **Attachment 14** (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts) in accordance with 24 C.F.R. Part 24 (Debarment and Suspension).
17. Applicable Labor Standards.
- 17.1 All laborers and mechanics employed by Contractors or subcontractors in the performance of construction work financed in whole or in part with CDBG funds from HUD must be paid at wages and rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with applicable law. Laborers and mechanics, respectively, are entitled to prevailing wage rates for their trade.
 - 17.2 This Section does not apply to:
 - 17.2.1 The rehabilitation of residential property containing less than eight units;
 - 17.2.2 An individual who:
 - 17.2.2.1 performs services for which the individual volunteered;
 - 17.2.2.2 does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services; and
 - 17.2.2.3 is not otherwise employed at any time in the construction work.
 - 17.3 Contractor must comply and must require its subcontractors to comply with all applicable labor standards and requirements, including but not limited to Davis-Bacon Wage and Reporting Requirements. Contractor must provide County for review certified payroll reports and related documentation. County will review the certified payroll reports and related documentation to identify any discrepancies and/or violations, and to ensure that laborers and mechanics are being paid not less than the prevailing wage rates contained on the applicable

Davis-Bacon Wage Schedule for the type of work they perform. In the event discrepancies or violations are found, Contractor must promptly make needed corrections.

- 17.4. Contractor is responsible for full compliance of its officers, employees, contractors, subcontractors and lower tier subcontractors with the labor standard provisions applicable to the project.
- 17.5. The County may periodically conduct on-site interviews with construction workers on the project to observe and learn about the work they perform, the hours they work, the type of work performed, and the wages received.
- 17.6. The County will investigate possible violations of the Davis-Bacon Act and related requirements and will recommend to HUD the imposition of sanctions in accordance with applicable law.
- 17.7. This Contract is also subject to the labor standards and requirements set forth in HUD-Form 4010, which is attached hereto as Attachment 1C and hereby incorporated by reference herein for all purposes as if fully copied and set forth herein at length. Contractor must comply and must require its subcontractors to comply with all the labor standards and requirements set forth in HUD Form 4010, which is attached herein as Attachment 1C and incorporated herein.

18. LOBBYING CERTIFICATION.

- 18.1 The limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, 31 U.S.C. Section 1352, provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Contractor, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered federal actions:
 - 18.1.1 the awarding of any federal grant;
 - 18.1.2 the making of any federal grant;
 - 18.1.3 the making of any federal loan;
 - 18.1.4 the entering into of any cooperative agreement; and
 - 18.1.5 the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 18.2 In executing this Agreement, the signatories certify to the best of his or her knowledge and belief that:
 - 18.2.1 No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal

contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and any extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- 18.3 The Contractor must include the above language in all contracts and subcontracts between Contractor and its, subcontractors, subconsultants, agents, or representatives.
 - 18.4 The Contractor or its, subcontractors, or consultant or subconsultants, as applicable, must complete and file the standard federal form (certification regarding lobbying) set forth in Appendix A to Title 24 C.F.R. Part 87. Submission of this certification is a prerequisite for making or entering into this transaction, as required by Title 31 U.S.C. Section 1352.
 - 18.5 Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - 18.6 The Contractor and its, subcontractors consultants, and subconsultants, as applicable, shall complete the Disclosure Form titled "Disclosure Form to Report Lobbying" set forth in Appendix B to Title 24 C.F.R. Part 87 in accordance with its instructions, as set forth in Attachment 18 hereto. In accordance with 24 C.F.R. Section 87.110(c), the Contractor, and its, subcontractors, consultants or subconsultants, as applicable, must file a Disclosure Form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any Disclosure Form previously filed by such person. This Agreement is subject to the provisions set forth in 24 C.F.R. Section 87.110 and all other applicable provisions of 24 C.F.R. Part 87. Any person who fails to file or amend the Disclosure Form will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
19. PRECEDENCE. All services and activities provided by Contractor related to Grant requirements and paid for by County utilizing Grant Funds ("Grant Activities") are specifically subject to terms of this Contract as well as those of the Grant. Should there be a conflict between requirements which cannot be reconciled, as determined by County, then the terms must be given precedence as follows:
1. Grant
 2. Contract
20. TERMINATION OF THE CONTRACT
- 20.1 TERMINATION BY THE OWNER
- 20.1.1 If the Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently

disregards laws, ordinances, rules, regulations or order of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the County may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and all materials, equipment, tools, construction equipment, and machinery thereon owned by the Contractor and may finish the Work by whatever method the County may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

20.1.2 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Project, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be approved by the Owner, upon application, in the manner provided in Section 14, and this obligation for payment shall survive the termination of the Construction Contract.

20.2 TERMINATION FOR DEFAULT

Failure by either party in performing any of its provisions shall be a breach of contract, in which case, either party may require corrective action within ten days after date of receipt of written notice citing the exact nature of the breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing failure within the prescribed ten days shall be a default. The defaulting party will be given a 20 day period within which to show cause why the Construction Contract should not be terminated for default. Commissioners Court may take whatever action as its interest may appear resulting from the notice. All notices shall be issued by the Purchasing Agent or the Owner's legal representative only and all replies shall be made in writing to the Purchasing Agent at the address provided herein. Notices issued by or to anyone other than the Purchasing Agent or Owner's legal representative shall be void, and shall be considered as not having been issued or received. The defaulting party shall be liable for actual damages as stipulated in this Construction Contract. Liquidated damages will also apply. The Owner may enforce the performance of this Construction Contract in any manner allowed by law in the event of breach or default, and may contract with another party with or without solicitation of bids or further notification to the Contractor. As a minimum, the Contractor shall be required to pay any difference in the cost of securing the products or services covered by this Construction Contract, or compensate for any loss or damage the Owner derived if it is necessary to contract with another source because of his default, plus reasonable administrative costs and attorney's fees. If termination for default occurs, Owner and its officials, agents and representatives shall not be liable for loss of any profits anticipated to be made.

20.3 TERMINATION FOR CONVENIENCE

The Owner may terminate this Construction Contract upon 30 days written notice if the Commissioners Court finds that termination serves the public interest, or results from any law, ordinance, regulation, or court order if termination is not authorized for any other reason. The Owner may not terminate the Construction Contract under this paragraph if it intends to award a contract for similar requirements to another Contractor within six months of termination. If the Owner terminates this Construction Contract under this

paragraph, it must pay the Contractor the cost directly attributable to Work done or supplies obtained in preparation for compliance with this Construction Contract prior to termination. The Owner is not required to pay costs that are recoverable in the normal course of doing the business in which the Contractor is engaged or costs which can be recouped by selling the Work done or supplies obtained. If the Owner pays for supplies or materials, these supplies and materials become the property of the Owner and the Contractor must deliver them to the place designated by the Purchasing Agent. The Owner is not liable for any loss of profits caused by this termination.

Additional Contract Provisions

In addition to the Contract provisions set forth above and the Contract provisions set forth in IFB No. B110291-JW, the following Contract provisions apply.

A. Davis-Bacon Certification/Certification of Eligibility

1. By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. §5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 C.F.R. Part 24.

2. No part of this contract is allowed to be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. §5.12 (a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 C.F.R. Part 24.

3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U. S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

B. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The Contractor must comply with Section 1605 of the ARRA. The following provision is required to be included in this contract pursuant to 2 C.F.R. § 176.140:

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act. (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including --

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	-----	-----	-----
Domestic steel, iron, or manufactured good	-----	-----	-----
Item 2:			
Foreign steel, iron, or manufactured good	-----	-----	-----
Domestic steel, iron, or manufactured good	-----	-----	-----

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

C. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

The Contractor shall comply with the wage requirements under Section 1606 of the ARRA:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

D. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

The following provision is required to be included in this contract pursuant to 2 CFR Section 176.210 to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures. In this provision, the Contractor is the recipient and its subcontractors are subrecipients. The Contractor shall comply with the following requirements:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to

separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

E. MONITORING

1. The County reserves the right to monitor the Contractor's performance of work under this Contract to verify that the Contractor is performing the work covered hereunder in compliance with the terms, conditions and provisions of this Contract, including all Exhibits and Attachments hereto, and to ensure compliance with the type of work and work schedules set forth in this Contract including the Exhibits and Attachments hereto. The County, through the County Executive, will monitor the Contractor's performance to ensure Contractor's compliance with applicable federal requirements. However, monitoring by County does not relieve Contractor of its responsibilities and obligations to comply with applicable federal requirements.

2. The County Executive will also monitor the Contractor's performance to ensure that performance goals are being achieved, to ensure that the work progress is on schedule and the Project remains within budget, to identify any errors or omissions in the Contractor's performance of work hereunder, and to coordinate with the Contractor to correct any errors or omissions in such work; provided, however, nothing in this Paragraph will be construed to relieve the Contractor of its responsibilities to discover and correct errors and omissions in its work under this Contract including the Exhibits and Attachments hereto; and, nothing in this Paragraph will be construed to relieve County's consultant of any responsibility it has by agreement with the County to monitor Contractor's performance of work hereunder.

3. Such monitoring will include periodic reviews of tasks against deliverables, as well as review of progress reports submitted by the Contractor against tasks and deliverables. The County Executive will monitor each program, function, or activity covered hereunder.

4. The County Executive may visit the actual worksite to inspect the work environment and/or Contractor's administrative offices to review documents and other Contract records.

F. CIVIL RIGHTS/ADA COMPLIANCE

1. The Contractor must provide all work required under this Contract in a manner that complies with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933]. The Contractor must not discriminate against any employee or applicant for employment based on race, color, sex, age, religion, national origin, or disability. Contractor also agrees that Contractor will not discriminate against any individual or group based on race, color, sex, age, religion, national origin, or disability.

2. The Contractor must comply with 42 U.S.C.A. Section 53.09 and 24 C.F.R. Parts 1, 6 and 8 as they relate to no discrimination, Executive Order 11246 titled "Equal Employment Opportunity" as amended by Executive Order 11375 (41 C.F.R. Part 60); and all other applicable federal, state and local Equal Employment Opportunity and affirmative action rules, regulations and laws.

3. The Contractor, with regard to work performed by it during the term of this Contract, must not discriminate on the grounds of race, color, sex, age, religion, national origin, or disability.

4. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier must be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relevant to non-discrimination on the grounds of race, color, sex, age, religion, national origin, age, or disability.

5. The Contractor must provide all information and reports necessary for the County to comply with applicable HUD regulations and must permit access to its books, records, accounts, other sources of information, and facilities as may be determined by HUD or the County to be pertinent to ascertain compliance with HUD regulations.

6. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor must so certify to the County and must set forth what efforts it has made to obtain the information.

7. In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, the County must impose such Contract sanctions as the County may determine to be appropriate, including, but not limited to:

- (i) Withholding of payments to the Contractor under this Contract until the Contractor complies; and/or
- (ii) Cancellation, termination, or suspension of this Contract, in whole or in part.

G. FUNDING OUT. Contractor acknowledges that this Contract is supported in whole or in part by federal funds provided through HUD and that HUD may reduce, adjust, or withdraw funding for future Program years. Notwithstanding any provision to the contrary in this Contract, in the event that either no funds or insufficient funds are appropriated, whether by the County or HUD, for any payments due under this Contract for the period covered by such budget or appropriation, this Contract will terminate without penalty to the County or HUD. This Section will be construed in conjunction with Subsection 8.11 of IFB No. B110291-JW.

H. FUNDING

1. [FOR CONTRACTS SUPPORTED IN WHOLE OR IN PART BY FEDERAL FUNDS] Funds for payment on this Contract will come from the American Recovery and Reinvestment Act via the U.S. Department of Housing and Urban Development.

2. Funds for payment on this Contract have also been provided through the County budget approved by Commissioners Court, and such funds have been provided for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of the County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract, except for unanticipated needs or events which may prevent such payments against this Contract. The Fiscal Year for the County extends from October 1st of each calendar year through September 30th of the next calendar year

3. THE COUNTY CANNOT GUARANTEE THE AVAILABILITY OF FUNDS, AND ENTERS INTO THIS AGREEMENT ONLY TO THE EXTENT THAT COUNTY FUNDS AND FEDERAL FUNDS ARE MADE AVAILABLE. THERE IS RISK INVOLVED WITH THIS AGREEMENT. THE COUNTY'S OBLIGATIONS UNDER THIS AGREEMENT ARE CONTINGENT UPON THE ACTUAL RECEIPT BY THE COUNTY OF ADEQUATE FEDERAL FUNDS. IF SUFFICIENT FEDERAL FUNDS ARE NOT AVAILABLE, THE COUNTY SHALL NOTIFY THE CONTRACTOR IN WRITING WITHIN A REASONABLE TIME AFTER SUCH FACT IS DETERMINED. THE COUNTY SHALL THEN TERMINATE THIS AGREEMENT AND WILL NOT BE LIABLE FOR THE FAILURE TO MAKE ANY PAYMENT TO THE CONTRACTOR UNDER THIS AGREEMENT.

I. NON-WAIVER OF DEFAULT. Consistent with IFB No. B110291-JW, no payment, act, or omission by the County may constitute or be construed as a waiver of any breach or default of the Contractor which then exists or may subsequently exist. All rights of the County under this Contract are specifically reserved and any payment, act, or omission will not impair or prejudice any remedy or right to the County under this Contract including the Exhibits and Attachments hereto, consistent with IFB No. B110291-JW. The exercise of any right or remedy in this Contract will not preclude the exercise of any other right or remedy under this Contract or under any law, nor will any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

J. OFFICIALS NOT TO BENEFIT. If a member of the Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court nor any member of his or her family nor a partner will receive a pecuniary benefit from the purchase; provided, however, this rule does not apply if the member's financial interest is minimal. This Contract is subject to the conflict of interest rules set forth in Title 24 Code of Federal Regulations Section 85.36, Subsection (b), Paragraph (3) and the County's Ethics Policy.

K. CONTRACTOR CERTIFICATIONS

1. Contractor certifies that Contractor (i) is a duly qualified, capable, and otherwise bondable business entity; (ii) is not in receivership and does not contemplate same; and (iii) has not filed for bankruptcy, and is not currently delinquent with respect to payment of property taxes within Travis County.
2. The Contractor certifies that it currently has adequate personnel in its employment for performance of the work required under this Contract, including the Exhibits and Attachments hereto, or it will be able to obtain such personnel from sources other than the County.
3. The Contractor represents that it has no conflict of interest that would in any way interfere with its or its employees' performance of work under this Contract including the Exhibits and Attachments hereto.

L. GRATUITIES. The County may terminate this Contract if it is found that gratuities of any kind, including entertainment or gifts, were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect to this Contract. If this Contract is terminated by the County pursuant to this provision, the County will be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.

M. CONFIDENTIALITY

1. Notwithstanding any provision in this Contract to the contrary, information obtained by County or any of its officials, employees, agents or representatives in connection with this Contract is subject to the provisions of the Texas Public Information Act and all legal authorities relating thereto, including but not limited to opinions, decisions and letter rulings issued by the Texas Attorney General's office.
2. In addition, information obtained by the County or any of its officials, employees, agents or representatives in connection with this Contract is subject to applicable federal statutes and regulations covering the confidentiality of or access to such information.

N. SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES PROGRAMS

1. The County will take all affirmative steps to assure that small and minority firms and women's business enterprises are used when possible.
2. These affirmative steps include:
 - i. placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - iii. dividing total requirements, when economically feasible, into smaller tasks or

quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. establishing delivery schedules, where the requirements permit, which encourage participation by small and minority businesses, and with women's business enterprises; and

v. using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

3. If subcontracts are to be let, the Contractor must take the affirmative steps listed in Paragraph 1 above, to assure that small and minority firms and women's business enterprises are used when possible.

4. To assure that small and minority businesses and women's business enterprises are used when possible, the County's Historically Underutilized Business Program (HUB) will be followed. In consideration of award of this Contract to the Contractor, the Contractor agrees to maintain a subcontractor relationship with any HUB subcontractors identified on the "Historically Underutilized Business Subcontracting Participation Declaration Form" which was provided with the Contractor's Bid. Identification of this relationship should be accomplished through completion of the "Notice of Intent to Subcontract with HUB Form," attached in IFB No. B110291-JW as part of Attachment 8. The NOI form should be signed by both the Contractor and HUB subcontractor, with a separate form submitted for each subcontractor, and provided to the Purchasing Agent within five (5) working days after Notification of Contract Award.

5. During the performance of this Contract, the Contractor must provide payment information on each HUB subcontractor using the "Travis County HUB Subcontractor Payment Record Form" attached to IFB No. B110291-JW as part of Attachment 8. This form must be submitted with each invoice from which a HUB subcontractor will be paid. For additional information, refer to the completion instructions on the forms.

6. No changes or substitutions are allowed to be made for the HUB subcontractors unless such substitution is also a HUB. Any substitution or changes must have prior approval of the Travis County Purchasing Agent or HUB Coordinator. To request a change, the "HUB Subcontractor/Subconsultant Change Form," attached to IFB No. B110291-JW as part of Attachment 8, must be completed and submitted to the County Purchasing Agent. Should there not be a HUB firm available as a replacement, Contractor may request an exemption from this requirement from the Purchasing Agent or HUB Coordinator.

All subcontracts for goods, materials, supplies, and services related to the construction Contract must include the provisions of this Section L and any other provisions required by law.

O. ENTITY STATUS. By my signature below, I certify that the Contractor is a Texas corporation, duly incorporated under Texas law and doing business in the State of Texas.

As a duly authorized representative of the Contractor, I acknowledge by my signature below that I have read and understand the above paragraphs and that the Contractor has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.

P. SIGNATORY WARRANTY

1. The undersigned signatory for the Contractor hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this Contract and that he or she has full and complete authority to enter into this Contract on behalf of the Contractor and to bind the Contractor validly and legally to all the terms, conditions and provisions of this Contract. These representations and warranties are not made for the purpose of inducing the County to enter into this Contract.

2. If the Contractor later alleges that such person lacks such authority, the County may immediately terminate this Contract without penalty or liability, other than payments owing Contractor for approved work actually performed hereunder.

EXECUTED THIS _____ DAY OF _____, YEAR _____.

TRAVIS COUNTY, TEXAS

CONTRACTOR NAME

BY: _____
TRAVIS COUNTY JUDGE

BY: Lang Vialla

APPROVED AS TO FORM:

TRAVIS COUNTY ATTORNEY

APPROVED:

COUNTY PURCHASING AGENT

CERTIFIED FUNDS ARE AVAILABLE

COUNTY AUDITOR, TRAVIS COUNTY

DRAFT

Fiscal Year 2012

Account Balance Inquiry

Account number . . . : 662-4911-621.60-99
Fund : 662 CDBG-R
Department : 49 TNR (TRANS & NATRL RESRC)
Division : 11 LAND DEVELOPMENT SERVICES
Activity basic : 62 INFRA-ENV SCVS (TRNS&RDS)
Sub activity : 1 TNR (TRANS & NATRL RESRC)
Element : 60 OTHER PURCHASED SERVICES
Object : 99 CONTRACTED SERVICES

Project Req'd

Original budget :	0	
Revised budget :	130,801	10/31/2011
Actual expenditures - current . . . :	.00	
Actual expenditures - ytd :	.00	
Unposted expenditures :	.00	
Encumbered amount :	737.09	
Unposted encumbrances :	.00	
Pre-encumbrance amount :	88,280.00	
Total expenditures & encumbrances:	89,017.09	68.1%
Unencumbered balance :	41,783.91	31.9

F5=Encumbrances F7=Project data F8=Misc inquiry
F10=Detail trans F11=Acct activity list F12=Cancel F24=More keys

PURCHASE REQUISITION NBR: 0000512009

REQUISITION BY: DONNA WILLIAMS 854-7677

STATUS: AUDITOR APPROVAL
REASON: ENC \$\$ PENDING AWARD ATTN: JASON WALKER

DATE: 9/24/10

SHIP TO LOCATION: TNR ADMIN - 11TH FLR

SUGGESTED VENDOR: KEYSTONE CONSTRUCTION

DELIVER BY DATE: 9/24/10

LINE NBR	DESCRIPTION	QUANTITY	UOM	UNIT COST	EXTEND COST	VENDOR PART NUMBER
1	CONSTRUCTION SERVICES FOR PLAINVIEW ESTATES WATERLINE PROJECT COMMODITY: PUBLIC WORKS/CONSTRUCTION SUBCOMMOD: UTILITY WK/PRIVATE EASEMT	83866.00	DOL	1.0000	83866.00	
2	5% RETAINAGE COMMODITY: PUBLIC WORKS/CONSTRUCTION SUBCOMMOD: CIP NON-CAPITAL REIMBUSMT	4414.00	DOL	1.0000	4414.00	
REQUISITION TOTAL:					88280.00	

A C C O U N T I N F O R M A T I O N

LINE #	ACCOUNT	PROJECT	%	AMOUNT
1	66249116216099	OTHER PURCHASED SERVICES HCHCU1 CONTRACTED SERVICES CDBG-R PLAINVIEW WTR	100.00	83866.00
2	66249116216099	OTHER PURCHASED SERVICES HCHCU1 CONTRACTED SERVICES CDBG-R PLAINVIEW WTR	100.00	4414.00
				88280.00

REQUISITION IS IN THE CURRENT FISCAL YEAR.

REQUISITION COMMENTS:

20100924 RT COURT
12/1/11 RETURN TO UPDATE AMOUNT. KS