



Travis County Commissioners Court Agenda Request

Meeting Date: April 22, 2014

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

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Approve contract award for Barkley Meadows Park Flood Repair Project, with Smith Construction, Inc.

- **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.
- The Onion Creek Greenway (Barkley Meadows Park) project was recently completed, however, it sustained damages from the October 31, 2013 flood event. The floodwaters deposited debris, eroded side-slopes, undermined structure foundations, and breached earthen embankments. Instability in some cases was created, and some facilities are now more vulnerable to additional damage from less severe future events.
- At the request of TNR on February 11, 2014, the Commissioners Court approved an exemption order for the Onion Creek Greenway (Barkley Meadows Park) project repair services in order to preserve and prevent additional damage to county property.
- Smith Construction, Inc. was the general contractor who originally completed the construction of the Onion Creek Greenway (Barkley Meadows Park) project. Their knowledge and familiarity of the project, along with the subsequent damages the project sustained, allows the cost and performance time of these repair services to Onion Creek Greenway (Barkley Meadows Park) to be minimized than if by another general contractor who is not familiar with this project and/or the October 2013 flood event which caused damage to the project.
- It is TNR's recommendation, with Purchasing's concurrence, that this contract be award to Smith Construction, Inc. in the amount of

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

\$518,305.00.

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

- **Contract-Related Information:**
 - Award Amount: \$518,305.00
 - Contract Type: Construction
 - Contract Period: 60 calendar days after issuance of notice-to-proceed.

- **Contract Modification Information: N/A**
 - Modification Amount:
 - Modification Type:
 - Modification Period:

- **Solicitation-Related Information: N/A**

Solicitations Sent:	Responses Received:
HUB Information: Vendor is not a HUB	% HUB Subcontractor: 10.68%

- **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: N/A

- **Funding Information:**
 - Shopping Cart/Funds Reservation in SAP: 300001128
 - Fund Center(s): 1490220000
 - Comments:

TRANSPORTATION AND NATURAL RESOURCES

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



700 Lavaca Street-5th Floor
Travis County Administration Building
PO Box 1748
Austin, Texas 78767
Phone: (512) 854-9383
Fax: (512) 854-4697

April 7, 2014

MEMORANDUM

TO: Marvin Brice, Assistant Purchasing Agent
FROM: Steven M. Manilla, P.E., County Executive
THROUGH: Morgan Cotten, P.E., Public Works Director
SUBJECT: Barkley Meadows Park Flood Repair Project - Contract 4400001942
Contract Award Recommendation

The following information is for your use in preparing a request to Commissioners Court to award a Construction Contract for the Barkley Meadows Flood Repair Project.

Proposed Motion:

Consider and take appropriate action on a request to approve a Construction Contract with Smith Contracting Company, Inc., for the Barley Meadows Flood Repair Project, in Precinct Four.

Summary and Staff Recommendation:

The scope of this project is flood repairs to the Onion Creek Greenway, Phase I Segment I Project located at Barkley Meadows. On October 31, 2013 a significant rain event produce a flood that damaged the newly completed Onion Creek Greenway, Phase I, Segment I project.

Smith Contracting Company, Inc. was the construction vendor for the Onion Creek Greenway, Phase I, Segment I project and is familiar with the flood damage to this project. A flood repair cost proposal has been received from Smith Contracting in the amount of \$518,305.00. TNR recommends award of contract to Smith Contracting.

Financial Information:

The repair work will be funded by CDBG. This funding was approved by Commissioner Court on February 4, 2014 agenda item 11. The funds reservation information is below.

FRD: 0300001128

WBS:	PKCN.149.000012	PKCN.149.000011	
Fund:	2054	2054	
Fund Center:	1490220000	1490220000	
G/L	511973	511973	
Grant	800072	800071	
Amount	\$ 77,903.95	\$ 440,401.05	\$ 518,305.00

If you have any questions or require additional information, please contact Miguel Villarreal at (512) 854-7586.

Attachments:

Exhibit
Bid Tab

CC: Cyd Grimes, County Purchasing Agent
Christy Moffett, CDBG
Cynthia McDonald, Donna Williams-Jones, Isabelle Lopez, Tawana Gardner,
TNR Financial Services
Charles Bergh, Division Director, TNR Parks
Steve Sun, P.E., Assistant Public Works Director, TNR
Miguel Villarreal, P.E., TNR

Funds Reservation 300001128

General Data			
Document type	FC	Document type	030
Company code	1000	Document date	04/07/2014
FM area	1000	Posting date	04/07/2014
Controlling area	1000	Currency	USD/ 1.00000
Statistics			
Entered by	GARDNET	Created on	04/07/2014
Last changed by		Last changed	
More Data			
Text	Barkley Meadows Park Flood Repair		
Reference			
Overall Amount	518,305.00 USD		

Document item 001			
Text	Barkley Meadows Park Flood Repair		
Commitment item	511973	Funds center	1490220000
Fund	2054	G/L account	511973
Cost center		Due on	
Vendor		Customer	
Amount	77,903.95 USD		

Document item 002			
Text	Barkley Meadows Park Flood Repair		
Commitment item	511973	Funds center	1490220000
Fund	2054	G/L account	511973
Cost center		Due on	
Vendor		Customer	
Amount	440,401.05 USD		

DRAFT



**PROJECT MANUAL
FOR
CONTRACT NO. 4400001942
TRAVIS COUNTY
PRECINCT NO. 4
FOR
BARKLEY MEADOWS PARK FLOOD
REPAIR PROJECT**

PLANS AND SPECIFICATIONS BY:

TRAVIS COUNTY TRANSPORTATION AND NATURAL RESOURCES
PUBLIC WORKS DIVISION
THROUGH THE
TRAVIS COUNTY PURCHASING OFFICE

DATE: MARCH 14, 2014
OWNER

TRAVIS COUNTY
Travis County, Texas
P. O. Box 1748
Austin, Texas 78767-1748

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I. INSTRUCTIONS TO CONTRACTOR

Payments for completed work will be made in progressive payments with the County retaining 5% of each payment until final acceptance of the project. Payments will be made by check. As required by Texas Government Code Sections 2253.001, et seq., a Payment Bond is required in the amount of 100% of the contract amount if the contract amount exceeds \$25,000, and a Performance Bond is required in the amount of the contract amount if the contract amount exceeds \$100,000.

If the contract is for an amount which Texas Government Code Chapter 2253 requires bonding, or 49 C.F.R. Part 18 authorizes bonding, a Performance Bond and Payment Bond must be given by the Contractor within 7 calendar days of written notification of award in the full amount of the contract to secure proper compliance with the terms and provisions of this contract, and to insure and guarantee the work until final completion and acceptance. The bonds will be attached to the executed contract and become a part thereof. All premiums for such bonds must be paid by the Contractor.

Historically Underutilized Businesses, including Contractor, subcontractors, and suppliers, are encouraged to participate in this project consistent with the goals of the Travis County Commissioners Court. Contractor must comply with all applicable Equal Employment Opportunity laws and regulations and all federal, state, and local regulations for construction safety and health standards.

Contractor must commence work upon issuance by the County of a written Notice to Proceed.

CONTRACTOR shall comply with the requirements of Chapter 2258 of the Texas Government Code (Prevailing Wage Rates) and Chapter 605 of the Texas Government Code (Hours of Labor).

Contractor must file a statement executed by, or on behalf of the person, firm, association, or corporation executing the contract certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the contract documents may result in non-award of the contract.

Contractor declares that:

- (1) the only person or parties interested in this contract as Principals are those named herein;
- (2) this contract is made without collusion with any other person, firm, or corporation;
- (3) Contractor has carefully examined the Form of the Contract, Instructions to Contractor, Profiles, Grades, Specifications, and Plans therein referred to, and this contract is made in accordance therewith, taking into consideration the locations, conditions, and classes of materials of the proposed work;

(4) Contractor agrees that it will provide all the necessary machinery, labor, tools, apparatus, and other means of construction, and will do all the work and furnish all the materials called for in the Contract and Specifications in the manner prescribed therein and according to the requirements of the County Executive of the Travis County Transportation and Natural Resources Department ("TNR") as therein set forth.

The contract includes the following:

- (1) a certification of compliance with Davis-Bacon standards (Attachment 1-D),
- (2) an affidavit and acknowledgment regarding Travis County ethics requirements (Attachment 3),
- (3) a completed, certified, and notarized safety record questionnaire (Attachment 4),
- (4) a stormwater pollution prevention compliance agreement (Attachment 5),
- (5) an environmental compliance and safety record questionnaire (Attachment 6),
- (6) HUB Subcontracting Participation Form (Exhibit A to Attachment 7),
- (7) HUB Good Faith Effort Determination Checklist (Exhibit B to Attachment 7),
- (8) a certificate of secretary (if Contractor is a corporation) (Attachment 10),
- (9) an affidavit regarding non-collusion, (Attachment 11),
- (10) DUNS Number Certification (Attachment 12),
- (11) a certification regarding debarment, suspension, ineligibility, and voluntary exclusion (Attachment 13),
- (12) Contractor Eligibility Verification Form (Attachment 14),
- (13) a certification regarding compliance with "Section 3" (Attachment 15), and
- (14) a disclosure regarding lobbying activities, if applicable (Attachment 16).

Contractor's proposal must comply with specifications regarding pricing. Contractor should provide contract item amounts totaling to a total contract price. Final payment for the above construction project will be paid for by check upon completion and acceptance of the work by the TNR County Executive.

It is understood that the quantities of work to be done are approximate only.

It is further agreed that the quantities of work to be done and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the TNR County Executive, to complete the work fully as planned and contemplated, and that all quantities of work, whether increased or decreased, are to be performed at the unit prices set forth in Contractor's proposal, except as provided for in the Specifications.

Contractor understands that in the event that a performance bond and payment bond are not required, then payment on the contract will be made upon acceptance by the County of satisfactory work by the Contractor. Even if performance and payment bonds are not required, a contract must be executed in the manner described herein.

The work proposed to be done will be accepted when fully completed and finished to the entire satisfaction of the TNR County Executive.

CERTIFICATION OF ELIGIBILITY:

- A. Contractor certifies that at the time of contract execution, it is not on the federal government's list of suspended, ineligible, or debarred contractors.
- B. Contractor certifies that its subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- C. Placement of Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify County as required in this Attachment may result in County's termination of the contract for default.
- D. When requested by the County or HUD, Contractor must furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension).

DISPUTES AND APPEALS: The Purchasing Agent acts as the County representative in the issuance and administration of this contract. Any document, notice, or correspondence not issued by or to the Purchasing Agent is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Agent or other authorized County person, the Contractor must submit a written notice to the Purchasing Agent within 10 calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, the Contractor may submit a Notice of Appeal to the Commissioners Court, through the Purchasing Agent, if the Notice is submitted within 10 calendar days after receipt of the unsatisfactory reply. The Contractor then has the right to be heard by the Commissioners Court. This paragraph does not apply to labor disputes, including disputes arising under the labor provisions set forth herein, which are subject to 29 C.F.R. Parts 5, 6, and 7.

MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality. This paragraph does not apply to labor disputes, including disputes arising under the labor provisions set forth in Section IV hereof, which are subject to 29 C.F.R. Parts 5, 6, and 7. Parts 5, 6, and 7 of Title 29 of the Code of Federal Regulations apply to labor disputes between the Contractor and any of its subcontractors, the Contractor and its employees or their representatives, the Contractor and the County, and the Contractor and the Department of Labor.

A. TEXAS WORKERS' COMPENSATION COVERAGE (TWCC)

The Texas Department of Insurance, Division of Workers' Compensation ("TDIDWC") has adopted Rule 110.110. Rule 110.110 applies to all building and construction contracts entered into by a governmental entity on or after September 1, 1994. **Rule 110.100, and any amendments thereto, affects this project.**

Rule 110.110 is designed to achieve compliance from contractors, subcontractors, and governmental entities regarding workers' compensation insurance coverage. **This affects contractor, subcontractors, and the County on this project.**

Providing false or misleading certificates of coverage, failing to provide or maintain required coverage, or failing to report any change that materially affects the coverage may subject the contractor(s) or other persons providing services on this project to administrative penalties, criminal penalties, civil penalties, or other civil actions. **This affects contractor and subcontractors.**

Therefore, the attached is provided in accordance with the requirements on governmental entities as set forth in Title 28, Part 2, Section 110.110(c) of the Texas Administrative Code. Please read this carefully and prepare your required contract documents in full compliance with TDIDWC Rule 110.110. Failure to provide the required certificates could result in non-award of the contract.

We do not believe that Rule 110.110 creates any additional duties or burdens on anyone which Texas workers' compensation laws, rules, and regulations have not already established. **Therefore, the County should not experience any increase in cost because of the need to comply with all Texas workers' compensation laws, rules, and regulations.**

Cyd V. Grimes
Purchasing Agent

Additional questions may be addressed to the Texas Department of Insurance, Division of Workers' Compensation Central Office, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744, (512) 804-4000 or (800) 372-7713.

TDIDWC RULE 110.110 Workers' Compensation Insurance Coverage

A. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B.** The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C.** The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D.** If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E.** The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

A. Texas Workers Compensation Coverage (TWCC)

- (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
 - G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
 - H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
 - I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

A. Texas Workers Compensation Coverage (TWCC)

- 6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

B. PREVAILING WAGE RATE DETERMINATION
SITE CONSTRUCTION & BUILDING CONSTRUCTION CRAFTS

[APPLICABLE TO ALL FEDERAL AID CONSTRUCTION CONTRACTS OF TWO THOUSAND DOLLARS (\$2,000) AND BELOW AND TO ALL RELATED SUBCONTRACTS]

NOTICE

The Travis County Commissioners Court has adopted the prevailing wage rates for Travis County as determined by the United States Department of Labor in accordance with the Davis –Bacon Act and its subsequent amendments. The prevailing wage rates for this project are those rates set forth for Travis County in the U.S. Department of Labor General Decisions for:

(1) Highway Construction Projects.

The U.S. Department of Labor General Decision referenced above is included beginning on page XX.

This determination of prevailing wages is not be construed to prohibit the payment of more than the rate named. Under no condition may any laborer, workman, or mechanic employed on this job be paid less than the minimum wage scale.

The Contractor must comply with all applicable state and federal laws, including, but not limited to, laws concerned with labor, equal employment opportunity, safety, and minimum wage. The Contractor must post the applicable Prevailing Wage Rate Determination in a prominent, easily accessible place at the work site. To ensure that the Contractor, and/or subcontractors are paying the posted specified rates (including fringe benefits when applicable) to all classifications of workmen, mechanics, and laborers, the County reserves the right to perform “spot labor interviews” and examine Contractor payroll information.

Pursuant to Chapter 2258 of the Texas Government Code:

1. A worker employed on a public work by or on behalf of the County must be paid:
 - (a) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (b) not less than the general prevailing rate of per diem wages for legal holiday and overtime work. NOTE: This Paragraph Number 1 does not apply to maintenance work.
2. A worker is employed on a public work for the purposes of Paragraph Number 1 if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the County or any officer or department of the County.
3. The contractor who is awarded a contract by the County or a subcontractor of the contractor must pay not less than the rates (plus fringe benefits when applicable)

as listed in the U.S. Department of Labor General Decisions referenced above to a worker employed by the contractor to work on the project.

4. A contractor or subcontractor who violates this section must pay to the County \$60.00 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in the U.S. Department of Labor General Decisions referenced above. The County will use any money collected pursuant to this section to offset the cost incurred in the administration of the requirements of Chapter 2258.
5. The County will take notice of complaints of all violations of this chapter committed in the execution of the contract and withhold money forfeited or required to be withheld under Chapter 2258 from the payments to the contractor under the contract, except that the County may not withhold money from other than the final payment without a determination by the County that there is good cause to believe that the contractor has violated this chapter.

II. Instructions to Contractor
 B. Prevailing Wage Rate Determination

Asphalt Distributor.....	\$ 15.55
Asphalt Paving Machine.....	\$ 14.36
Boom Truck.....	\$ 18.36
Broom or Sweeper.....	\$ 11.04
Concrete Pavement Finishing Machine.....	\$ 15.48
Crane, Hydraulic 80 tons or less.....	\$ 18.36
Crane, Lattice Boom 80 tons or less.....	\$ 15.87
Crane, Lattice Boom over 80 tons.....	\$ 19.38
Crawler Tractor.....	\$ 15.67
Directional Drilling Locator.....	\$ 11.67
Directional Drilling Operator.....	\$ 17.24
Excavator 50,000 lbs or Less.....	\$ 12.88
Excavator over 50,000 lbs...	\$ 17.71
Foundation Drill, Truck Mounted.....	\$ 16.93
Front End Loader, 3 CY or Less.....	\$ 13.04
Front End Loader, Over 3 CY.	\$ 13.21
Loader/Backhoe.....	\$ 14.12
Mechanic.....	\$ 17.10
Milling Machine.....	\$ 14.18
Motor Grader, Fine Grade....	\$ 18.51
Motor Grader, Rough.....	\$ 14.63
Pavement Marking Machine....	\$ 19.17
Reclaimer/Pulverizer.....	\$ 12.88
Roller, Asphalt.....	\$ 12.78
Roller, Other.....	\$ 10.50
Scraper.....	\$ 12.27
Spreader Box.....	\$ 14.04
Trenching Machine, Heavy....	\$ 18.48
 Servicer.....	 \$ 14.51
 Steel Worker	
Reinforcing.....	\$ 14.00
Structural.....	\$ 19.29
 TRAFFIC SIGNAL INSTALLER	
Traffic Signal/Light Pole Worker.....	\$ 16.00
 TRUCK DRIVER	
Lowboy-Float.....	\$ 15.66
Off Road Hauler.....	\$ 11.88
Single Axle.....	\$ 11.79
Single or Tandem Axle Dump Truck.....	\$ 11.68
Tandem Axle Tractor w/Semi Trailer.....	\$ 12.81

WELDER..... \$ 15.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

=====

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

=====

END OF GENERAL DECISION

**ATTACHMENT 1-A
Jobsite Wage Rate Posting**

[Applicable all Federal-aid construction contracts and all related subcontracts of \$2,000 or below]

IMPORTANT INFORMATION



YOU CAN DIRECT ANY WAGE DISPUTES OR QUESTIONS TO:

**TRAVIS COUNTY PURCHASING OFFICE
700 LAVACA STREET, SUITE 800
AUSTIN, TEXAS 78701
512-854-9700**

Pursuant to Section 2258.023(a) of the Government Code, "The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract."

INFORMACION IMPORTANTE



**TU PUEDES DISCUTIR O PREGUNTAR DE TU SALARIO
DIRECTAMENTE CON:**

**OFICINA DE COMPRAS DE TRAVIS COUNTY
700 LAVACA STREET, SUITE 800
AUSTIN, TEXAS 78701
512-854-9700**

De acuerdo con la seccion 2258.023(a) del Codigo del Gobierno, "El contratista al que le fue adjudicado un contrato por el Gobierno, o su subcontratista, debaran pagar a un trabajador contratado, no menos que las tarifas determinadas bajo la seccion 2258.022, para la ejecucion del contrato."

C. PAYMENT OF PREDETERMINED MINIMUM WAGE

**ATTACHMENT 1-B
NOTICE REQUIRED**

[Applicable to all Federal-aid contracts exceeding \$2,000]

NOTICE REQUIRED

The wage determination (including any additional classifications and wage rates conformed under 29 C.F.R. Part 5) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the worksite in a prominent and accessible place where it can be easily seen by the workers. The Davis-Bacon poster (WH-1321) may be obtained at the U.S. Department of Labor website: <http://www.dol.gov/esa/regs/compliance/posters/davis.htm> The two printed pages must be taped or pasted together to form an 11 x 17 inch poster.

Applicable Labor Standards

a. 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.

b. This Section does not apply to:

1. The rehabilitation of residential property containing less than eight units;
2. An individual who:
 - (I) performs services for which the individual volunteered;
 - (II) does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services; and
 - (III) is not otherwise employed at any time in the construction work.

c. 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.

d. 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.

e. 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.

f. 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.

g. This Contract is also subject to the labor standards and requirements set forth in HUD-Form 4010, which is attached hereto as Attachment 1-C and hereby incorporated by reference herein for all purposes as if fully copied and set forth herein at length. **THE 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 1-C AND INCORPORATED HEREIN.**

ATTACHMENT 1-C
HUD FORM 4010

Federal Labor Standards Provisions

U.S. Department of Housing
and Urban Development
Office of Labor Relations**Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (1) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. 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 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall 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 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) 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."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 95). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ATTACHMENT 1-D
HUD Form 4010 Davis-Bacon Certification

Certification of Eligibility.

(i) 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.

(ii) No part of this contract shall 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.

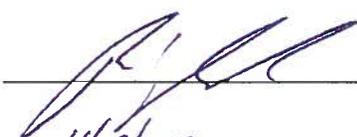
(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U. S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of...influencing in any way the action 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.

(iv) The contractor further certifies that it is in compliance with and that it will remain in compliance with the provisions in HUD FORM 4010.

WARNING: Falsifying information on this certification is a felony.

For: Smith Contracting Inc
(Name of Contractor)

By: TRAVIS RAGLAND - Vice President
(Typed Name of Authorized Representative - Responsible Corporate Officer, General Partner, or Sole Proprietor)

Signature: 

Date: 4/8/14

D. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this Contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

E. SELECTION OF LABOR

During the performance of this Contract, the Contractor must not: (1) discriminate against labor from any other state, possession, or territory of the United States, or (2) employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

F. NONDISCRIMINATION

[APPLICABLE TO ALL FEDERAL-AID CONSTRUCTION CONTRACTS AND ALL RELATED SUBCONTRACTS BELOW \$10,000.]

The selection of labor to be employed by the Contractor on any Federal-aid project shall be by the Contractor without regard to race, color, religion, sex, national origin, age or disability and in accordance with 23 C.F.R. Part 230, 41 C.F.R. Part 60 and Executive Order No. 11246 (September 24, 1965), 3 C.F.R. 339 (1964-1965), as amended.

G. DUNS REGISTRATION

The Contractor and each subcontractor for the Project must provide the County with a Data Universal Numbering System (DUNS) number. The DUNS number must be provided in a document from Dun and Bradstreet. The County will not process any payment requests from the Contractor before receiving this document from the Contractor. The Contractor and its subcontractors must maintain a current DUNS number for the entire Contract Term.

H. SPECIFIC PROJECT REQUIREMENTS

ITEM 1

1.1 **Definitions** - Wherever in these specifications or other Contract documents, the following terms, abbreviations, or pronouns are used, the intent and meaning will be interpreted as follows:

1.2 **Abbreviations**

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute
API	American Petroleum Institute
AREA	American Railroad Engineers Association
ASTM	American Society for Testing Materials
AWG	American Wire Gage
AWPA	American Wood Preservers Association
AWPB	American Wood Preservers Bureau
AWPI	American Wood Preservers Institute
AWS	American Welding Society
DFPA	Douglas Fir Plywood Association
FHWA	Federal Highway Administration.
HUD	United States Department of Housing and Urban Development
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
NBFU	National Board of Fire Underwriters
NEC	National Electrical Code (Published By NBFU)
NEMA	National Electrical Manufacturers Association
NFPA	National Forest Products Association
SFPA	Southern Forest Products Association
SHA	State Highway Administration.
SPIB	Southern Pine Inspection Bureau
TCEQ	Texas Commission on Environmental Quality
TMUTCD	TX Manual on Uniform Traffic Control Devices for Streets and Highways
TXDOT	Texas Department of Transportation
UL	Underwriters Laboratory, Inc.
WWPA	Western Wood Products Association

1.3 Bid Guaranty

[Intentionally Deleted.]

1.4 Bidder

[Intentionally Deleted.]

1.5 Certificate of Insurance

Proof of insurance in an approved form covering standard insurance requirements.

1.6 Change Directive

A written directive to the CONTRACTOR, signed by the OWNER, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.

1.7 Change Orders

Written agreements entered into between CONTRACTOR and OWNER authorizing an addition, deletion, or revision to the Contract, issued on or after the execution date of the Agreement.

1.8 Commissioners Court

The duly elected County Judge and four County Commissioners; the legally constituted governing body of Travis County.

1.9 Construction Administrator

The consulting engineering firm hired by the County to prepare sealed plans and specifications or such other firm or entity as the County may designate, if any. The County reserves the right to perform this function with its own personnel, in whole or in part, at any time during the term of the Contract.

1.10 Construction Site Notice

The Construction Site Notice ("CSN") is a standard form promulgated by TCEQ and prepared by the County that is required for the Storm Water Pollution Prevention Plan ("SWP3"). The CSN must be posted and maintained on the construction site throughout construction of the Project until final site stabilization is completed.

1.11 Contract

The agreement between the County and the Contractor covering the furnishing of materials and performance of the work. The contract includes the Notice of Construction, the Contractor's Proposal, all documents, forms, notices, certifications and requirements referenced in the Project Manual, and any Addenda or Amendments thereto), the Contract Documents, Bonds, the General

Conditions, the Supplementary Conditions, Plans and Specifications, and Supplemental Agreements approved by authorized representatives of the County and the Contractor.

1.12 Contract Time

The number of calendar days or working days allowed for completion of the work as defined by the Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period.

1.13 Contractor

The individual, firm, corporation, or any combination thereof with which the Contract is made by the County.

1.14 County

Travis County, a political subdivision of the State; Owner.

1.15 Department

The Texas Department of Transportation (TxDOT).

1.16 Engineer

The County Executive of the Travis County Transportation and Natural Resources Department (TNR) or his authorized representative.

1.17 Field Order

A written order issued by the Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time.

1.18 Highway, Roadway, Street, or Road

A general term denoting a public way for purposes of vehicular travel, the movement of people, distribution of goods, and provision of essential services, including the entire area within the right of way.

1.19 Inspector

The authorized representative of the Engineer assigned to supervise and inspect any or all parts of the work and the materials to be used therein.

1.20 Laboratory

Any qualified commercial laboratory that may be designated or approved by the Engineer.

1.21 Nonresident Bidder

[Intentionally Deleted.]

1.22 Notice to Proceed

A written notice given by the Travis County Purchasing Agent to the Contractor fixing the date on which the Contract time will commence to run and on which the Contractor is allowed to perform the work under the Contract documents.

1.23 Owner

Travis County, a political subdivision of the State of Texas.

1.24 Owner's Representative

The designated representative of the Owner.

1.25 Payment Bond

The security furnished by the Contractor solely for the protection of claimants, as defined by law, supplying labor and materials for the prosecution of the work in accordance with the terms of the Contract.

1.26 Performance Bond

The security furnished by the Contractor to guarantee the completion of the work in accordance with the terms of the Contract.

1.27 Plans

The drawings included in the Contract Documents and any subsequent drawings approved by the Engineer or true reproductions thereof which show the location, character, dimensions, and details of the work and which are a part of the Contract.

1.28 Project

The specific section or sections of the proposed public improvement together with all appurtenances and construction to be performed thereon under the Contract.

1.29 Proposal or Bid

Contractor's proposal, made out on a prescribed form, giving unit prices for performing the work described in the plans and specifications.

1.30 Purchasing Agent

The purchasing agent for the County who reports to the Travis County Purchasing Board and her designated representatives.

1.31 Resident Project Representative

The individual representing the Owner, sometimes selected from the design professional's firm, who administers the construction contract and monitors progress and the relationship among the project site personnel.

1.32 Right of Way

The land provided for a highway or other public utility or conveyance.

1.33 Screens and Sieves

Have the meanings defined by the ASTM.

1.34 Specifications

The directions, provisions, and requirements contained herein, supplemented by such special provisions as may be issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the contract. In the event that a technical specification is not included or when additional work is required, the relevant provisions of the TxDOT Standard Specifications will apply. Where the phrases "or directed by the Engineer," "ordered by the Engineer," or "to the satisfaction of the Engineer" occur, it is to be understood that the directions, orders, or instructions to which they relate are within the limitations of, and authorized by the contract. Special provisions will cover work pertaining to a particular project and included in the Contract but not covered by the Specifications. Where reference is made to specifications of ASTM, AASHTO, or Bulletins and Manuals of the Department, it will be construed to mean the latest standard or tentative standard in effect on the date of the Contract.

1.35 State

The State of Texas.

1.36 Storm Water Pollution Prevention Plan ("SWP3")

The portions of the plans and specifications in the Contract Documents which are included to meet the regulatory requirements of the TCEQ General Permit TXR150000 For Storm Water Discharges From Construction Activities, and corresponding requirements in the Travis County MS4 Permit TXR040327 and Storm Water Management Program ("SWMP") approved by TCEQ. The measures and controls in the SWP3 are required to be implemented by the Contractor to prevent storm water and pollutant discharges from the Project construction activities to the maximum extent practicable ("MEP").

1.37 Superintendent

The representative of the Contractor authorized to receive and fulfill instructions from the Engineer, and who will supervise and direct the construction.

1.38 Supplemental Agreements

Written agreements entered into between the Contractor and the County, with, and approved by the Surety, covering alterations and changes in plans which are necessary to the proper completion of the work

1.39 Surety

The corporate body or bodies bound with and for the Contractor for the faithful performance of the work covered by the contract and for the payment for all labor and supplied in the prosecution of the work.

1.40 The Work

The work must include the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all duties and obligations imposed by the Contract.

1.41 Working Day

A working day is defined as a calendar day, not including Saturdays, Sundays, or legal holidays as authorized and designated by the Commissioners Court, in which weather or other conditions not under the control of the Contractor will permit the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7 a.m. and 6 p.m. Central Standard Time. For every Saturday or legal holiday except the following holidays:

New Year's Day, Martin Luther King's Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve (when it falls on a weekday) and Christmas Day

on which the Contractor chooses to work, one day will be charged against the Contract working time when weather conditions will permit 7 hours of work as delineated above. The principal unit of work must be that unit which controls the completion time of the Contract. Nothing in this item may be construed as prohibiting the Contractor from working on Saturdays or legal holidays, except those listed above, if the Contractor so desires. Work on Sunday and on the legal holidays listed above will not be permitted except in cases of extreme emergency and then only with the written permission of the Engineer. If Sunday work or work on the legal holidays listed above is permitted, working time will be charged on the same basis as weekdays. The Engineer may suspend the work and the "Time Charge," in accordance with Paragraph 8.7, "Temporary Suspension of Work" of Item 8, "Prosecution and Progress," on the day proceeding or following one of the listed holidays if the Engineer and the Contractor mutually agree the Contractor should not work. Such suspension must be based upon past experience as to the volume of holiday traffic that may be expected and the hazard to the traveling public and/or Contractor's employees that project operations would present.

1.42 Working Hours

All construction work must be done between 7:00 a.m. and 6:00 p.m. Central Time unless otherwise authorized by the Owner's Representative.

1.43 "Fiscal Year" means the County Fiscal Year, which is that twelve-month time period between any October 1 and the next following September 30.

1.44 "General Revenue Funds" or "Current Revenue Fund" means funds in the County treasury that are not grant funds and are available in the current fiscal year if appropriated by the Commissioners Court for purposes of funding this Contract.

1.45 "Grant" means any contract or agreement governing use of funds from any funding source (other than County General Revenue Funds) from which funds will be paid for services provided under this Contract.

1.46 "Grant Funds" means funds available which:

1.46.1 have as their source a grant from a federal, state or local governmental agency, private or non-profit organization; and

1.46.2 have an identified purpose, performance expectations, and financial standards that control expenditures; and

1.46.3 have specific requirements for their use depending on whether the parties to a Grant funded agreement are contractors, subcontractors, recipients, sub-recipients, grantees or sub-grantees, as determined by the original Grant, accounting practices, and applicable federal and state regulations;

OR

1.46.4 are provided from a source which the County has determined to be a Grant source.

1.47 "Is doing business" and "has done business" mean:

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

1.47.2 Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;

1.47.3 but does not include:

1.47.3.1 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;

1.47.3.2 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

1.47.3.3 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.

- 1.48 "Key Contracting Person" means any person or business listed in Exhibit A to the Affidavit attached to this Contract and marked Attachment 3.
- 1.49 "Median Family Income" means the guidelines established by the U. S. Department of Housing and Urban Development for the Austin-Round Rock Metropolitan Statistical Area for the current Fiscal Year.
- 1.50 "Parties" and "Party" means the County and/or Contractor.
- 1.51 "Poverty Income Guidelines" means the guidelines established by the United States Office of Health and Human Services for the current Fiscal Year of the federal government.
- 1.52 "Reimbursable," "Allowable," or "Authorized Costs" means those amounts authorized to be paid by County to Contractor under the terms of this Contract with Contract Funds.
- 1.53 "Subcontract" means any agreement between Contractor and another party to fulfill, either directly or indirectly, any of the requirements of this Contract, in whole or in part. "Subcontract" includes contracts, subcontracts, recipient agreements, sub-recipient agreements, grantee agreements and/or subgrantee agreements.
- 1.54 "Subcontractor" means any party providing services required under this Contract to an Eligible Client or to Contractor under an agreement between Contractor and that party, including contractor(s), subcontractor(s), and other subrecipient(s) of Contractor, and any party or parties providing services for Contractor which will be paid for using Contract Funds committed by County to be paid to Contractor under this Contract. Subcontractor includes contractors, subcontractors, recipients, sub-recipients, grantees and sub-grantees.
- 1.55 "Business concern" means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.
- 1.56 "CDBG Program" means the Community Development Block Grant Program established pursuant to the Housing and Community Development Act, P.L. 93-383, 42 U.S.C. § 5301 *et seq.*, as amended.
- 1.57 "Employment opportunities generated by section 3 covered assistance" means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with section 3 covered projects (as described in § 135.3(a)(2)), including management and

administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

1.58 "Section 3" means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

1.59 "Section 3 business concern" means a business concern, as defined in this section-

- (1) That is 51 percent or more owned by section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

1.60 "Section 3 clause" means the contract provisions set forth in 24 C.F.R. § 135.38.

1.61 "Section 3 covered activity" means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

ITEM 2

ADDITIONAL INSTRUCTIONS TO CONTRACTOR

2.1 Contents of Contract

The Contract states the location and description of the proposed work, an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished, a schedule of items for which unit prices are requested, and the time within which the work is to be completed. The standard specifications, special provisions, and special specifications are also included in the Contract.

2.2 Interpretation of Estimates of Quantities

The quantities listed in the Contract will be considered as approximate and will be used for the comparison of bids. Payments will be made to the Contractor in accordance with Items 4 (Scope of Work) and 9 (Measurement and Payment).

2.3 Examination of Plans, Specifications, Special Provisions, and Site of Work

Contractor represents and warrants that he has examined carefully the contents of the Contract, including plans, specifications, special provisions, and the form of contract to be entered into for the work contemplated. Contractor further represents and warrants that he has examined the site of work and satisfy himself/herself as to the conditions which will be encountered relating to the character, quality, and quantity of work to be performed and materials to be furnished. Execution of the Contract is conclusive evidence that it has complied with these requirements.

The borings, profile, and water elevations shown on the plans were obtained for use of the County in the preparation of plans, and the Contractor is hereby cautioned that the County assumes no responsibility for the accuracy or completeness of these data. The Contractor, in executing the Contract, has taken cognizance of the difficulty of accurately classifying all material encountered in making foundation investigations and any changes in materials not shown by borings, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded. A copy of the complete geotechnical report, if any, prepared for this project may be obtained from the Travis County Transportation and Natural Resources (TNR) Department upon request.

Contractor must promptly notify the County of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents or of the site and local conditions. Contractor represents and warrants that he requires no clarification or interpretation of the Project Manual documents. Any interpretation, correction, or change in the Contract Documents will be made by Addendum. Interpretations, corrections, or changes in the Contract Documents in any other manner will not be binding, and Contractor must not rely upon such interpretations, corrections, and changes.

Claims for additional compensation due to variations between conditions actually encountered in construction and as indicated by the plans will not be allowed.

2.4 Preparation of Bid

[Intentionally deleted.]

2.5 Rejection of Bids Containing Alterations, Erasures, or Irregularities

[Intentionally deleted.]

2.6 Bid Guaranty

[Intentionally deleted.]

2.7 Delivery of Contract

Contractor must submit the Safety Record Questionnaire and Acknowledgment, Statement of Eligibility regarding HUB Procurement Program, and the Affidavit

and Acknowledgment regarding Travis County Ethics Requirements, together with an original and two copies of the completed and signed Contract.

2.8 Revision of Bid

[Intentionally deleted.]

2.9 Withdrawal of Bid

[Intentionally deleted.]

2.10 Public Opening of Bids

[Intentionally deleted.]

2.11 Disqualification of Bidder

County may decide not to award the Contract to Contractor for any of the following specific reasons: the Contractor having an interest in any litigation against Travis County, the Contractor being in arrears of any existing contract or having defaulted on a previous contract, uncompleted work which in the judgment of Commissioners Court will prevent or hinder the prompt completion of additional work if awarded, an unacceptable safety record, or violation of Travis County's Ethics Policy.

2.12 Submission of Documents for Historically Underutilized Business (HUB) Program

Contractor must complete Attachment 7, SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES [HEREINAFTER REFERRED TO AS THE HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM] REQUIRED ITEMS TO BE SUBMITTED WITH BID. Specifically, Contractor must complete forms titled "HUB Subcontracting Participation Declaration Form" and "Determination of Good Faith Effort (GFE) Checklist" and submit them with their Contract. Contractor must complete the Form titled "Notice of Intent to Subcontract with HUB" also contained in Attachment 7 and supply it to the Purchasing Agent or his/her representative during the pre-construction conference. The Contractor is further required to complete the Form titled "Travis County HUB Subcontractor Payment Report," also contained in Attachment 7-8, and provide it with each invoice submitted. The Form titled "HUB Subcontractor/Subconsultant Change Form," also contained in Attachment 7, must be completed when it becomes necessary to terminate, reduce or substitute a HUB subcontractor. Finally, the Contractor must complete all other Forms contained in Attachment 7 as required therein.

2.13 Substitute Bid Proposal

[Intentionally deleted.]

ITEM 3
AWARD AND EXECUTION OF CONTRACT

3.1 Consideration of Bids

[Intentionally deleted.]

3.2 Award of Contract

The award of the contract, if it is to be awarded, will be to Smith Contracting Co.

3.3 Return of Bid Guaranty

[Intentionally deleted.]

3.4 Execution of Contract, Bonds, and Certificate of Insurance

Contractor must sign and furnish to the Commissioners Court the original signed Contract. Within 10 calendar days of written notification of award of the Contract, the Contractor must furnish to the County a performance bond (for contracts in excess of \$100,000) and a payment bond (for contracts in excess of \$25,000), each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with the laws of the State of Texas, and a Certificate of Insurance, naming Travis County as an additional insured, showing coverage in accordance with contract requirements.

The performance bond and payment bond are to be furnished as a guarantee of the faithful performance of the work and for the protection of the claimants for labor and materials as outlined in the Item 1, "Definition of Terms."

When the amount of the contract is \$25,000 or less, a performance bond and payment bond will not be required. When the amount of the contract is \$100,000 or less, a performance bond will not be required.

3.5 Award and Approval of Contract

The Contract will be approved and signed under authority of the Commissioners Court.

3.6 Failure to Deliver Bonds, Certificate of Insurance, or to Submit Trench Excavation Protection System Plan

Contractor's refusal or neglect to file the bonds and Certificate of Insurance within 7 calendar days after written notification of the award of the Contract, or, when required, to submit to the Engineer a Trench Excavation Protection System Plan prepared by a Texas-licensed Professional Engineer in compliance with 29 C.F.R. Part 1926 Subpart P, within 21 calendar days after written notification of the award of the Contract, will be grounds for the County to declare Contractor in default and to terminate the Contract.

3.7 Beginning of Work

The Contractor must begin construction within 14 calendar days after the effective date of the written "Notice to Proceed." The County will prepare the Construction Site Notice ("CSN") required for the SWP3 and give a copy to the Contractor to post on the Project site at least 7 calendar days before beginning construction clearing and grading activities. The County will post the CSN initially if necessary for instances when the Notice to Proceed is issued less than 7 days before the commencement of clearing or grading activities. The CSN must remain posted by the Contractor throughout the Project construction in the place where the Contractor posts and maintains other notices and permits required for the Project. Before beginning grading and clearing construction activities, the first phase of erosion and sedimentation controls and all tree fencing required in the

SWP3 must be installed by the Contractor. A field pre-construction meeting must be held with the Contractor and the County to verify the first phase of these controls are correctly in place before the Contractor begins grading and clearing activities.

3.8 Antitrust

The Contractor, by virtue of signing the contract, assigns to the County any and all claims for overcharges associated with the contract which arise under the antitrust laws of the United States, 15 U.S.C.A., Section 1 et seq.

**ITEM 4
SCOPE OF WORK**

4.1 Intent of Plans and Specifications

It is the intent of the plans and specifications to describe a completed work to be performed under the Contract. Unless otherwise provided, the Contractor must furnish all materials, supplies, tools, equipment, supervision, and labor necessary for the proper prosecution and completion of the work.

4.2 Changes and Alterations

The Engineer has the right to make changes and alterations in the plans as may be considered necessary or desirable. Such changes and alterations are not to be considered as a waiver of any condition of the Contract, nor will they invalidate any of the provisions thereof. The Contractor must perform the work as changed or altered.

Necessary work resulting in a substantial change in the character of the work will be, upon demand of either party to the Contract, considered as "Extra Work." Changes made for the convenience of the Contractor will not be considered "Extra Work." In addition, changes made necessary for compliance with applicable federal statutes or regulations or orders will not be considered as "Extra Work."

A substantial change in the character of the work is defined as:

- (a) A required change in design or specifications which materially affects the unit cost of an item, or
- (b) A required change in the plans which requires the Contractor to repeat work previously completed, or
- (c) A required change in the construction methods for a Contract item which significantly increases or decreases the amount of equipment, labor, or subordinate materials required to complete the item of work.

Increases or decreases in the quantity of work or materials to be furnished under an item in the Contract and placed in accordance with the Contract specifications and plan requirements will not be considered as a change in the character of the work but will be considered under Paragraph 4.14 below.

4.3 Extra Work

Work made necessary by changes and alterations of the plans or for other reasons for which no prices are provided in the contract shall be defined as "Extra Work" and shall be performed by the Contractor in accordance with appropriate specifications and as directed by the Engineer; however, before any extra work is begun, a Change Order, Change Directive, Field Order, or Force Account Agreement must be executed by the County.

4.4 Change Orders

The Owner and the Contractor will execute appropriate written Change Orders to cover: (1) a change in the work; (2) the amount of the adjustment in the Contract Amount, if any; and (3) the extent of the adjustment in the Contract Time, if any. An executed Change Order must present the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time owed to the Contractor or the Owner as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

4.5 Change Directives

Without invalidating the Contract, the Owner may, by written Change Directive, using a mutually agreed basis for adjustment of Contract Amount and Contract Time, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions. A Change Directive is for Work where no price is available in the Contract or the conditions do not allow time for the process of a formal Change Order. A subsequent Change Order will be processed as soon as the adjusted amount of Work, Contract Amount, and Contract Time can be defined; however, in no case will the Change Order be processed later than 7 calendar days after the completion of the changes. A Change Directive must not be used for changes which may result in an increase of more than \$5,000 in the Contract Amount unless approved in writing by the Engineer.

4.6 Field Orders

The Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment of the Contract Amount or Contract Time and are compatible with the design concept of the completed project as a functioning whole as indicated by the Contract Documents. These must be accomplished by written Field Order and are binding on the Owner and on the Contractor who must perform the work involved promptly. If the Contractor believes that a Field Order would require an adjustment in Contract Amount or Contract Time, the Contractor must not perform the work covered by the Field Order until a written Change Directive or Change Order is approved. If the Field Order resulted in changes in the construction drawings, the changes must be redlined on the Inspector's set of construction drawings and incorporated into the final as-built drawings.

4.7 Maintenance of Detours

The Contractor must do such work as may be necessary to provide and maintain detours and facilities for safe public travel in accordance with the plans and these specifications. The Contractor must provide and maintain in passable condition, as specified under Paragraph 7.7 (Public Safety and Convenience) and 7.8 (Barricades and Danger, Warning, and Detour Signs, and Traffic Handling), such

temporary roads and structures as may be necessary to accommodate public travel. Temporary approaches and crossings of intersecting highways must be provided and maintained in a safe and passable condition by the Contractor at its entire expense.

4.8 Rights in and Use of Materials Found on the Right of Way

The Contractor may, if approved in writing by the Engineer, use in the work any suitable stone, gravel, or sand found in the excavation and will be paid for the excavation of such materials at the contract price. No charge for materials so used will be made against the Contractor. The Contractor must, however, at its own expense replace with other suitable materials the materials so removed and which were intended for use in embankments, backfill, approaches, or elsewhere. The Contractor must not excavate nor remove any material from within the right of way or easements which is not within the excavation, as indicated by the slope and grade lines, without prior written authorization from the Engineer.

4.9 Final Cleaning Up

Upon completion of the work and before acceptance and final payment is made, the Contractor must clean, remove rubbish and temporary structures from the right of way and easements, restore in an acceptable manner all property which has been damaged during the prosecution of the work, and leave the site of the work in a neat and presentable condition throughout. All final cleaning up and site stabilization must be in conformance with the approved SWP3 for the Project.

Upon the completion of any structure, all excess materials, cofferdams, construction buildings, temporary structures, and debris and sediment resulting from construction must be removed. Where work is in a stream, all debris and sediment must be removed to the ground line of the bed of the stream, and the stream channels, structure, and highway left unobstructed and in a neat and presentable condition. Materials cleared from the right of way and deposited on property off the project right-of-way will not be considered as a satisfactory method of disposal, unless approved by the Engineer. A letter provided by the Contractor and signed by the property owner allowing disposal of material is required, as well as documentation that placement of this fill complies with all permitting requirements of the County and any other applicable governmental jurisdictions, before the Engineer will approve the disposal of material on property off the right-of-way. No direct payment will be made for this work, its cost being included in the Contract unit prices. The Contractor is responsible for securing all applicable permits.

4.10 Storm Water Pollution Prevention Plan ("SWP3") and Environmental Management

The Contractor must manage and maintain the entire construction site in accordance with the approved SWP3 and all applicable environmental, health, and safety regulations, in order not to negatively impact the environment. The Contractor must employ personnel that have the necessary experience, qualifications, and training to install, inspect, and maintain the controls and measures required in the SWP3. The SWP3 includes sediment controls and other structural and non-structural practices to prevent discharges of sediment and other pollutants to adjacent waterways and off-site areas. The SWP3 also includes delineation of the limits of construction, clearing, temporary spoils storage, permanent spoil disposal, staging areas, and haul roads. Areas where

construction has temporarily ceased must be stabilized in accordance with the SWP3 and General Permit. Final stabilization of the Project Site is required, including seeding, watering, and other measures to re-establish grass cover. Preservation and fencing of all trees designated to be saved is required in accordance with the plans. Other SWP3 measures include construction site entrance and exit controls; dust control; solid waste management and disposal; controls for de-watering, concrete truck wash-out, and work adjacent to streams; spill prevention and control; proper industrial and hazardous materials use, storage, and disposal, etc. Other environmental, health, and safety requirements in addition to the SWP3-related items include proper management of site burning and abatement and mitigation of excessive or unnecessary construction noise.

4.11 Removal and Disposal of Structures and Obstructions

All fences, buildings, and structures of any character not necessary to the construction of the work or other obstructions upon or within the limits of the right of way must be removed by the Contractor and disposed of as directed. Unless otherwise provided in the contract, the removal and disposal of such structures and obstructions must be performed by the Contractor at its own expense and will be considered incidental to other items of the contract. However, all utility lines along and across the right of way, must be protected by the Contractor. The respective owners of any utility line in conflict with the work herein provided must remove and/or adjust such line at no cost to the Contractor.

4.12 "Or Equal" Clause

Whenever a material or article required is specified or shown on the plans, by using the name of a proprietary product or of a particular manufacturer or vendor, any material or article which will perform adequately the duties imposed by the general design will be considered equal and satisfactory, provided the material or article so proposed is of equal substance and function and is approved in writing by the Engineer.

4.13 Special Work

Any construction or requirements not covered by the plans or by these specifications will be covered by special provisions which will be included in the Contract. Such special provisions will be considered as a part of the Contract, the same as though contained fully herein.

4.14 Increases and Decreases in Quantity of Work

The Engineer has the right to increase or decrease the quantities of the work, as may be considered necessary or desirable. Such increases or decreases do not constitute a waiver of any condition of the contract, nor will they invalidate any of the provisions thereof. The Contractor must perform the work as increased or decreased. Payment to the Contractor for contract items will be made for the actual quantities of work done or material furnished at the unit prices set forth in the contract, except as provided (1) in specification items requiring plan quantity payment, (2) for changes in the character of the work, and (3) for overruns and under-runs of major items.

A major item is defined as any individual Contract item included in the Contract that has a total cost equal to or greater than 5 percent of the original contract or \$100,000.00, whichever is less.

When the quantity of work to be done or the quantity of material to be furnished under any major item of the contract is more than 120 percent of the quantity stated in the Contract, then either party to the contract, upon demand, will be entitled to revised consideration on the portion of work above 120 percent of the quantity stated in the Contract.

When the final quantity of work done under any major item of the Contract is less than 80 percent of the quantity stated in the Contract, the adjusted unit price to apply to the final quantity of work performed under the Item will be determined by multiplying the unit price by the factor obtained from Table I. In no instance may the product of the adjusted price and the final quantity of work exceed the product of the original Contract unit price and 80 percent of the original contract quantity, and in no instance will the unit price be adjusted to more than 120 percent of the original contract unit price.

TABLE I

% Decrease	Factor	% Decrease	Factor
20-24	1.01	60	1.13
25-28	1.02	61	1.14
29-32	1.03	62	1.15
33-35	1.04	63	1.16
36-38	1.05	64	1.17
39-41	1.06	65	1.18
42-44	1.07	66	1.19
45-47	1.08	67	1.20
48-50	1.09	68	1.21
51-53	1.10	69	1.22
54-56	1.11	70	1.23
57-59	1.12	71	1.24
		72 and over	1.25

**ITEM 5
CONTROL OF THE WORK**

5.1 Authority of Engineer

The work will be observed, tested, and inspected by the Engineer and must be performed to his/her satisfaction, in accordance with the contract, plans, and specifications. The Engineer will decide all questions which may arise as to the quality or acceptability of materials furnished and work performed; the manner of performance and rate of progress of the work; the interpretations of the plans and specifications; and the acceptable fulfillment of the contract on the part of the Contractor. The Engineer's decisions are final, and he/she has executive authority to enforce and make effective such decisions and orders.

5.2 Authority of Construction Administrator

The Construction Administrator will act on all questions arising under the terms of the contract between the parties thereto, and, along with the Engineer, has authority for the purpose of resolving technical matters. In any case, the decision of the Travis County Commissioners Court is final and binding.

5.3 Plans

The plans will show in detail the work to be accomplished under the contract. When supplementary plans, shop drawings, shop details, erection drawings, working drawings, or other drawings are required, they must be furnished by the Contractor, and approved by the Engineer prior to the beginning of the work involved. These drawings must be in standard English units and must be in the English language. Authorized alterations will be approved by endorsement on the plans or shown on supplementary sheets. The approval by the Engineer of the Contractor's working drawings will not relieve the Contractor of any responsibility under the contract.

It is the responsibility of the Contractor to verify all quantities of materials shown on the plans before ordering same, as payment is provided for acceptable materials completely in place, and materials rejected due to improper fabrication or excess quantity or for other reasons within the control of the Contractor will not be paid for regardless of the quantities or dimensions shown on the plans. The Engineer, when requested, may check any or all material orders prepared by the Contractor, but such check will not relieve the Contractor of responsibility.

5.4 Conformity with Plans, Specifications, and Special Provisions

All work performed and all materials furnished must conform with the lines, grades, cross sections, dimensions, details, gradations, and physical and chemical characteristics of materials in accordance with tolerances shown on the plans or indicated in the specifications and special provisions unless otherwise directed by the Engineer.

In the event the Engineer finds that the work performed or the materials used do not conform with the plans, specifications, and special provisions, the affected material or product must be removed and replaced or otherwise satisfactorily corrected by and at the expense of the Contractor.

Deviations from the plans and approved working drawings as may be required will in all cases be determined by the Engineer and, if approved, will be authorized in writing by the Engineer.

5.5 Coordination of Plans, Specifications, Special Provisions, and Standard Instructions to Contractor

The specifications, accompanying plans, special provisions, standard instructions to Contractor, and supplemental agreements are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. In the event that a technical specification is not included or when additional work is required, the relevant provisions of the TxDOT Standard Specifications or City of Austin Standard Detail or Specifications, as dictated by the Engineer, will apply. They are intended to be cooperative and to describe and provide for a complete work. In cases of disagreement, figured dimensions will govern over scaled dimensions, specifications will govern over plans, and special provisions will govern over both specifications and plans.

5.6 Cooperation of Contractor

The Contractor will be supplied with four copies of the plans, specifications, and special provisions and must have available at the work site at all times one copy of each. The Contractor must give the work its constant attention to facilitate the progress thereof and shall cooperate with the Engineer in every way possible.

The Contractor must have at all times a satisfactory and competent English-speaking Superintendent at the work site authorized to receive orders and to act for the Contractor. The Contractor must designate to the Engineer in writing the name of such Superintendent regardless of how much of the work may be sublet.

5.7 Control Stakes

The Contractor must construct the work to the position and elevations as set out on the plans and approved changes. A fully controlled, referenced, and monumented traverse line and a calculated centerline of the project have been established by the County. Survey information concerning the traverse line will be furnished to the Contractor. The Contractor must perform centerline staking from reference ties (coordinates) to the control traverse and perform all other surveys required for construction based on the centerline.

The Contractor must provide a qualified and experienced force to perform this work and must keep the Engineer informed a reasonable time in advance of the time and place the Contractor intends to work. Copies of all cut sheets must be furnished to the inspector when issued by the Contractor.

The Engineer may, at his/her option, make spot or complete checks on all construction alignment and grades to determine the accuracy of the Contractor's survey work. These checks will not relieve the Contractor of his/her responsibility for constructing the work to the positions and elevations as shown on the plans or approved changes. Computations, sketches, and other drawings used in the design and layout of this project made available to the Contractor will not relieve the Contractor of his/her responsibility as set out above.

The Contractor must furnish all stakes and other materials necessary to set and preserve control points for alignment and grade.

The Contractor is responsible for the preservation of all control and right-of-way points established by the Engineer and if, in the opinion of the Engineer, any stakes or bench marks have been carelessly or willfully destroyed or disturbed by the Contractor, they must be replaced by the Contractor or the cost of replacing them will be charged against the Contractor and deducted from the payment for the work.

No direct payment will be made for this work, but the cost of all labor, equipment, and supplies necessary to perform the work will be included in the Contract unit prices for the various contract items.

5.8 Storm Water Pollution Prevention Plan (SWP3) Responsibilities and Authority

Travis County is the Operator of the Travis County Municipal Separate Storm Sewer System ("MS4") under MS4 Permit # TXR040327 and the County's MS4 Storm Water Management Program ("SWMP") approved by the Texas Commission for Environmental Quality (TCEQ). SWMP Minimum Control Measure ("MCM") 7 gives Travis County authority to permit its own construction activities in the County MS4 as the Primary Construction Site Operator with operational control over construction plans and specifications. Travis County will provide the Storm Water Pollution Prevention Plan (SWP3) included in the plans, sign a Construction Site Notice (CSN) to be posted and maintained on the Project Site by the Contractor, authorize and direct ongoing revisions and maintenance to the SWP3 by the Contractor as necessary, prepare and sign

SWP3 Inspection Reports required by the MS4 Permit # TXR040327, and approve final stabilization and completion of SWP3 items for the Project.

The Contractor is the Primary Construction Site Operator with day-to-day operational control of construction site activities. The Contractor must sign the SWP3 Compliance Agreement and Certification included in this contract and is responsible for implementing and maintaining all SWP3 requirements continuously in accordance with the approved plans, specifications, contract, TCEQ General Permit, and Travis County MS4 Permit and SWMP. The Contractor must employ personnel with the necessary experience, qualifications, and training to install, inspect, and maintain the controls and measures required in the SWP3. The Contractor must post and maintain the County CSN and comply with TCEQ regulations for filing and posting a separate CSN and Notice of Intent (NOI) for the Project if required. The Contractor is not required to prepare a separate SWP3 document or submit signed SWP3 Inspection Reports to TCEQ for the Project. However, the Contractor must provide weekly written SWP3 inspection reports, in a report format provided by the County, to the County's inspector.

The Contractor must perform inspections, in addition to those required in the construction drawing and project manual, which it deems necessary to maintain compliance with the approved SWP3 measures and controls and TCEQ regulations. The cost for performing such inspections will not be paid directly by the Owner but will be considered subsidiary to other Contract items. The Contractor's or subcontractor's SWP3-related inspection reports, if prepared for the Project, must be submitted to the Owner for inclusion in the Owner's SWP3 report filing.

5.9 Authority and Duties of Inspectors

Inspectors are authorized to inspect all work done and all materials furnished. Such inspections may extend to all or to any part of the work and to the preparation or manufacture of the materials to be used. An Inspector will be assigned to the work by the Engineer and will report to the Engineer as to the progress of the work and the manner in which it is being performed. An Inspector will also report to the Engineer whenever it appears that the materials furnished or the work performed by the Contractor fails to fulfill the requirements of the specifications and contract. The Inspector will call the attention of the Contractor to any such failure or other infringement. Such inspection will not relieve the Contractor from any obligation to perform the work in accordance with the requirements of the specifications and contract.

In case of any dispute arising between the Contractor and the Inspector as to materials furnished or the manner of performing the work, the Inspector has the authority to reject materials and/or suspend work until the questions at issue can be referred to and decided by the Engineer. The Inspector is not authorized to revoke, alter, enlarge, or release any requirement of these specifications; to approve or accept any portion of work; or to issue instructions contrary to the plans and specifications. The Inspector will in no case act as foreman or perform other duties for the Contractor nor interfere with the management of the work.

5.10 Inspection

The Contractor must furnish the Engineer and Inspectors with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the contract. Before the acceptance of the work, the Contractor must, if the Engineer so requests, remove or uncover any

portions of the finished work as may be directed. After examination, the Contractor must restore said portion of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing and replacing of the covering or making good of the parts removed will be paid for as "Extra Work," but should the work so exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed must be at the Contractor's expense. No work is allowed to be done nor materials used without suitable supervision or inspection.

5.11 Federal Inspection

5.11.1 When the United States Government is to pay a portion of the cost of the work covered by the Contract, the work will be subject to on-site inspection by representatives of the United States Department of Housing and Urban Development and other United States government representatives in addition to County representatives. The County and HUD representatives have the right to make site visits as warranted by program needs. If any site visits are made on the premises of the Contractor or subcontractor, Contractor must provide and require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the County representatives, HUD representatives, or other federal government representatives in the performance of their duties. Such inspections do not make the United States Government a party to the Contract.

5.11.2 On-site technical inspections and certified percentage of completion data are relied on heavily by HUD to monitor progress of work on the construction project covered hereunder.

5.12 Removal of Defective and Unauthorized Work

All work which has been rejected must be remedied or removed and replaced in a manner acceptable to the Engineer and must be performed by the Contractor at the Contractor's own expense. Work done beyond the lines and grades given or as shown on the plans, except as herein provided, or any extra work done without written authority is considered unauthorized and done at the expense of the Contractor and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply with any order of the Engineer made under the provisions of this paragraph, the Engineer is authorized to cause defective work to be remedied or removed and replaced and unauthorized work to be removed, and the cost thereof may be deducted from any money due or to become due to the Contractor.

5.13 Final Inspection

Whenever the work provided for, in, and contemplated under the contract has been satisfactorily completed and the final cleaning up performed, the Engineer will make a final inspection. After such final inspection, if the work is found to be satisfactory, the Contractor will be notified in writing of the acceptance of same. No time charge will be made against the Contractor between said date of notification of the Engineer in charge and the date of final inspection of work.

Where the work consists of concrete pavements or concrete base, the "Final Acceptance" does not release the Contractor from responsibility for the thickness of the concrete, which will be determined by means of taking cores from the pavement. The coring of the pavement will be done within 90 days from completion of the pavement.

Final acceptance does not relieve the Contractor from any obligation for replacement or repair of any work or materials due to latent defects of materials or workmanship.

5.14 Final Completion and Acceptance

When the work has been completed or substantially completed, the Contractor must give the Engineer written notice. Within 10 working days after receipt of this notice, the Construction Administrator and the County will inspect the work and if the work is found to be completed in accordance with the Contract Documents, the Construction Administrator must issue to the County and the Contractor his Certificate of Completion. It will then be the duty of the County within 10 working days after receipt of the Certificate of Completion to issue a Certificate of Acceptance of the work to the Contractor or to advise the Contractor in writing of the reason for non-acceptance.

5.15 Existing Structures

The plans show the locations of all known surface and subsurface structures. However, the location of many gas mains, water mains, conduits, sewers, abandoned wells, septic drain fields, landfills, underground storage tanks, etc., are unknown, and the County assumes no responsibility for failure to show any or all of these structures on the plans or to show them in their exact location. It is mutually agreed that such failure will not be considered sufficient basis for any claim for additional compensation for extra work or for increasing the pay quantities or any claim for additional working days in any manner whatsoever unless the obstruction encountered is such as to necessitate changes in the lines or grades or requires the building of special work, in which case the provisions in these specifications for payment of extra work will apply.

5.16 Final Payment

Upon the issuance of the Certificate of Completion, the Engineer will proceed to make final measurements and prepare a final statement for the value of all work performed and materials furnished under the terms of the Agreement and will certify the same to the County, which will pay to the Contractor, within 30 days after the date of the Certificate of Acceptance, the balance due the Contractor under the terms of the Contract; and said payment will become due in any event upon said performance by the Contractor. Neither the Certificate of Acceptance nor the final payment will relieve the Contractor of the obligation for fulfillment of any warranty which may be required.

5.17 Guarantee Against Defective Work

5.17.1 Contractor warrants all materials and workmanship and that the work is in conformance with the Project Manual and Plans included in this contract for a period of one year from the date of the Certificate of Final Acceptance of the entire project. Said warranty binds Contractor to correct any work that does not conform with such Project Manual and Plans or defects in workmanship or materials furnished under this Contract which may be discovered within said one year period. Contractor shall, at its own expense, correct any such defect within 30 days after receiving written notice of such defect from Owner by repairing the same to the condition called for in the Contract. Should Contractor fail or refuse to repair such defect within said 30-day period or to provide acceptable assurances that such repair work will be completed within a reasonable time thereafter, Owner may repair or cause to be repaired any such defect by calling the Contractor's Performance Bond.

5.17.2 Upon submission of the executed Contract, Contractor must set forth warranty provisions covering specific construction products or features.

**ITEM 6
CONTROL OF MATERIALS**

6.1 Sources of Supply and Quality of Materials.

6.1.1 The source of supply of each of the materials must be approved by the Engineer before delivery is started and at the option of the Engineer, may be sampled and tested for determining compliance with the governing specifications by the Engineer before delivery is started. If it is found after trial that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, the Contractor must furnish materials from other approved sources. Only materials conforming to the requirements of these specifications and approved by the Engineer are allowed to be used in the work. All materials being used are subject to inspection or test at any time during their preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when re-tested, do not meet the requirements of the specifications, will be rejected. No material which after approval has in any way become unfit for use is allowed to be used in the work. If, for any reason, the Contractor selects a material which is approved for use by the Engineer by sampling and testing or other means, and then decides to change to a different material requiring additional sampling and testing for approval, the expense for such sampling and testing may be deducted from any monies due or to become due to the Contractor.

6.1.2 Throughout these specifications where reference is made to the Department's Test Procedures, ASTM, AASHTO or bulletins of the Department for the quality of materials or sampling and testing, the latest standard, tentative standard or bulletin issued prior to the date of the Contract will govern.

6.1.3 If it is the normal trade practice for manufacturers to provide warranties or guarantees for the materials and equipment provided herein, the Contractor must turn the guarantees and warranties over to the Engineer for potential dealing with the manufacturers.

6.2 Samples and Tests

Before being incorporated into the work, all materials must be inspected, tested, and approved by the Engineer, and any work in which materials are used without prior testing and approval or written permission of the Engineer may be ordered removed and replaced at the Contractor's expense. Sampling and testing of all materials proposed to be used will be done by the Engineer. The County will designate the selection of the method of testing. Where tests are required, other than those done in the laboratory for the purpose of control in the manufacture of a construction item, the Contractor must furnish such facilities and equipment as may be necessary to perform the tests and inspection and is responsible for calibration of all test equipment required. When requested, the Contractor must furnish a complete written statement of the origin, composition, and/or manufacture of any and all materials that are to be used in the work.

The County will contract with an independent testing laboratory to perform field-testing as required by Item 6, Control of Materials, and the various construction

specifications of the contract. Where the Contractor notifies the County of scheduled work requiring sampling and testing and the Contractor cancels the work for any reason whatsoever after the Laboratory personnel have departed their office for the project site, the testing laboratory will bill the County for their time and travel expenses and the County will deduct said charges from amounts due the Contractor. When the Contractor's operations or Saturday work is scheduled necessitating the payment of overtime, the testing laboratory will bill the County for the time charges, and the County will deduct one-third of said amounts from amounts due the Contractor.

6.3 Plant Inspection

If the volume of the work, construction progress, and other considerations warrant, the Engineer may undertake the inspection of materials at the source. It is understood, however, that no obligation is assumed to inspect materials in that manner.

Plant inspection will be undertaken only upon condition that:

- (a) The cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials is assured.
- (b) The Engineer and/or or his/her designated representative will have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials ordered.
- (c) When required by the Engineer, the material producer must furnish an approved weatherproof building for the use of the Inspector, such building to be located conveniently near the plant and independent of any building used by the material producer. The building must be adequately lighted, heated, and ventilated. Adequate restroom facilities must be provided.
- (d) Where inspection requirements are such that it is necessary to use scales, measures, and/or other equipment which may be required by the Engineer for the control of production and use of materials, the Contractor will be responsible for furnishing and calibrating such equipment.
- (e) In those cases where inspection of any item is requested for periods other than daylight hours, it must be provided under the following conditions:
 - (1) Continuous production of materials for County use is necessary due to the production volume being handled by the plant.
 - (2) The lighting provided by the plant is approved by the Engineer to be adequate to allow satisfactory inspection of the material being produced.
- (f) Materials produced under County inspections will be for County use only unless released in writing by the Engineer.

6.4 Pretested Materials

Subject to conditions established in a written agreement between a supplier and the Engineer, pretested and approved materials may be incorporated into the work.

6.5 Storage of Materials

Materials must be so stored as to insure the preservation of their quality and fitness for the work. When considered necessary by the Engineer, they must be placed on wooden platforms or other hard, clean surfaces and not on the ground. They must be placed under cover when so directed. Stored materials must be so located as to facilitate prompt inspection.

When approved by the Engineer, selected materials or products may be pretested and approved for use, provided they are stored in an area meeting the requirements set forth by the Engineer.

6.6 Defective Materials

All materials not conforming to the requirements of these specifications will be rejected and must be removed immediately from the site of the work unless permitted to remain by the Engineer. Rejected materials, the defects of which have been subsequently corrected, must have the status of new material. Upon failure on the part of the Contractor to comply with any order of the Engineer made under the provisions of this item, the Engineer is authorized to remove and replace defective material and to deduct the cost of removal and replacement from any money due or to become due to the Contractor.

6.7 Hauling of Material

Any vehicle, truck, truck-tractor, trailer, semi-trailer, or combination of such vehicles, when used to deliver materials to a project, must comply with the State laws concerning the gross weight of such vehicle or combinations of vehicles and load and the allowable axle weights unless authorized by permit to exceed the legal weight.

The gross vehicle weight for acceptance purposes under this special provision for various vehicle configurations must be in accordance with State law. In case a vehicle or combination of vehicles exceeds the legal gross weight or the posted load limit by 5% or less, a haul ticket will be issued and payment will be made for the load allowed by the maximum legal weight for the vehicle or vehicles. Continued overloading with a tolerance of 5% will be grounds for rejection of such load.

Any vehicle or combination of vehicles that exceeds the legal gross weight by more than a tolerance of 5% must be rejected.

When the specifications establish measurement of and payment for materials by other than weight, the Engineer may require the weighing of the various types of loaded vehicles used by the Contractor to transport the material. This weight will be used to determine the maximum volume of the material being hauled that each type of vehicle may transport. The cost of such weighing will be considered subsidiary to the pertinent Contract item.

The above requirements are applicable to vehicles hauling materials over existing roadbeds and structures within the project limits where the roadbeds or structures will continue in use after project completion except as controlled by specifications and special provisions in the contract. The requirements do not apply to the transportation of materials from a borrow pit or base source, concrete plant, asphalt plant, etc., where the haul route does not require travel

over public roads outside the project limits or existing roadbeds or structures within the project limits that will continue in use after project completion.

Construction traffic on existing bridges and direct traffic culverts within the limits of a project, except those to be widened or extended, will be governed by the following:

Construction vehicles that exceed the legal load limit, which would require a permit to haul over the highway system, are not authorized across structures. Where a posted load limit exists on either the highway system or off the highway system, construction vehicles that exceed the posted load limit are not permitted.

Where a detour is not readily available or economically feasible to use, an occasional crossing of a structure with overweight equipment may be permitted for relocating equipment only, but not for hauling material, provided that a structural analysis indicates that no damage will result. The structural analysis must be approved by the Engineer. Temporary matting and/or other requirements may be imposed by the Engineer if an occasional crossing is permitted.

The Contractor is responsible for protection of existing small structures within the limits of a project. Any such structure damaged by the use of construction equipment must be restored to its original condition or replaced by the Contractor, all at the Contractor's expense. Additional temporary fill may be required by the Engineer for protection of certain structures.

ITEM 7

LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

7.1 Laws to be Observed

The Contractor must make itself familiar with and at all times must observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect the conduct of the work and must indemnify and save harmless the County and its representatives against any claim arising from the violation of any such law, ordinance, or regulations, whether by himself/herself, his/her employees, his/her subcontractors, or employees of his/her subcontractors.

The County and the Contractor specifically agree that none of the provisions of any part of the contract are intended to make the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this contract. The duties, obligations, and responsibilities of the parties to this contract with respect to third parties will remain as imposed by law.

If sites, buildings, and locations of historical, archeological, educational, or scientific interest are discovered after construction operations begin, operations in that particular area must cease immediately and the sites, buildings, or locations will be investigated and evaluated by the County. An extension of time

will be granted, if necessary, for delays caused by these investigations and evaluations.

7.2 Differing Site Conditions

7.2.1 During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions must promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

7.2.2 Upon written notification, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

7.2.3 No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

7.2.4 No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

7.3 Permits, Licenses, and Taxes

The Contractor must procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incident to the due and lawful prosecution of the work.

7.4 Patented Devices, Materials, and Processes

If the Contractor is required to or desires to use any design, device, materials, or process covered by letters of patent or copyright, the Contractor must provide for such use by suitable agreement with the patentee or copyright owner. The Contractor and the surety must indemnify and save harmless the County from any and all claims for infringement by reason of the use of any patented design, device, materials, or process, or any trademark or copyright used in connection with the work agreed to be performed under the contract; provided, however, that Travis County, Texas will assume the responsibility to defend any and all suits brought for the infringement of any patent claimed to be infringed upon by the design, type of construction, or materials specified in the plans furnished the Contractor by Travis County, Texas. The Contractor must provide the County and HUD a royalty-free, non-exclusive and irrevocable right to use and authorize others to use any patents covering discoveries or inventions developed in the course of or under this Contract.

7.5 Insurance Schedules

The Contractor must not commence work under this Contract until the Contractor has obtained all the insurance required hereunder and certificates of such insurance have been filed with and reviewed by the Owner. Acceptance of the insurance certificates by the Owner does not relieve or decrease the liability of the Contractor. The Owner must be named as an additional insured on the

policies. The Contractor must not change or modify the insurance coverage without prior notice to the Owner.

Unless otherwise provided for in the Contract Documents, the Contractor must provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverages in the following schedule.

The minimum required limits may be achieved by purchasing an excess liability policy so long as such policy provides coverages at least as broad as the primary insurance.

7.5.1 Worker's Compensation and Employer's Liability Insurance:

Worker's Compensation Insurance must be as required by law and must include an all states or universal endorsement.

Employer's Liability Insurance must be written for not less than \$500,000 each occurrence.

7.5.2 Commercial General

Minimum Limits:

Per Occurrence	\$1,000,000
Aggregate	\$3,000,000

The following coverages must be specifically insured and certified with no internal sub limits. A separate aggregate limit is acceptable for the Products/Completed Operations hazard:

- 1) Independent Contractors Contingent Liability
- 2) Products/Completed Operations Liability
- 3) Contractual Liability
- 4) "X, C, U" Hazard Liability (if applicable)
- 5) Personal Injury Liability including claims related to employment
- 6) Broad Form Property Damage Liability and deletion of the "Care, Custody, and Control" exclusion
- 7) Waiver of Defense of Municipal Liability Immunity

Travis County will be named as an additional insured where the County's interest may appear.

7.5.3 Business Automobile Liability Insurance

1. Coverage for all owned, non-owned, and hired vehicles must be maintained with limits of \$1,000,000 written on a per occurrence or combined single limit.
2. Policy must also include the following endorsements in favor of the County:
 - a. Waiver of Subrogation (Form TE 2046A)
 - b. Thirty (30) day Notice of Cancellation (Form TE0202A)
 - c. Travis County named as an additional insured (Form TE 9901B)

7.5.4 EXCESS LIABILITY

Excess coverage may be required when limits of insurance are inadequate to cover the risk exposure created by the project.

Excess Liability Limits (\$10,000,000) Appropriate amount to be determined based on project.

Excess Liability Policy will follow form of the underlying general liability and business automobile liability.

7.5.5 This furnishing of the required insurance coverages, as may be modified by special Conditions, is one of the Contractor's initial requirements of the Contract which must be performed before a Notice to Proceed can be issued. All insurance policies must be open to inspection by the County, and copies of policies must be submitted to the County upon written request.

7.5.6 The contractual liability is to be written on a blanket basis for all written or oral contracts, or specifically endorsed to acknowledge the contract between the insured and the County of Travis. If included in the general liability policy contractual liability must be specified on the certificate of coverage.

7.5.7 All certificates of insurance must provide that the insurance company must give the County an affirmative statement, with no qualifications, that 30 days' prior written notice will be given to the County in the event of policy cancellation, non-renewal or material reduction in coverage provided under the policy, including impairment of any aggregate limits less than \$3,000,000.

7.5.8 A waiver of subrogation in favor of Travis County will be endorsed to all policies. Travis County will be named as an additional insured where the County's interest may appear and where specifically indicated in the schedule of insurance.

7.5.9 The Contractor must provide the insurance required herein. The Contractor may include the cost of acquiring the insurance within the Contract unit prices for the several pay items of the Contract.

7.5.10 Insurance Covering Work on State Right-of-Way.

a. If this Contract authorizes the Contractor or its subcontractors to perform any work on State right-of-way before beginning work, the entity performing the work must provide the State with a fully executed copy of the TxDOT's Form 1560, Certificate of Insurance, verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right-of-way. [Specify location of work.] This coverage must be maintained until all work on the state right-of-way is complete.

b. If coverage is not maintained, all work on state right-of-way must cease immediately, and the State may recover damages and all costs of completing the work.

7.5.11. Protective Insurance. [FOR PROJECTS INVOLVING CONSTRUCTION WORK NEAR RAILROAD RIGHT-OF-WAY.]

a. In connection with highway projects for the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, the Contractor must purchase, at its own expense, and maintain at all times during the term of Contract, railroad protective liability insurance on behalf of the railroad.

b. Coverage must be limited to damage suffered by the railroad on account of occurrences arising out of the work of the Contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except as noted below.

c. Coverage must include:

(1) death of or bodily injury to passengers of the railroad and employees of the railroad not covered by state workmen's compensation laws;

(2) personal property owned by or in the care, custody, or control of the railroad;

(3) the Contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) negligence of only the following classes of railroad employees:

(i) any supervisory employee of the railroad at the job site;

(ii) any employee of the railroad while operating, attached to, or engaged on, work trains, or other railroad equipment at the job site which are assigned exclusively to the Contractor; or

(iii) any employee of the railroad not within (i) or (ii) who is specifically loaned or assigned to the work of the Contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the Contractor or governmental authority.

d. The maximum dollar amounts of coverage to be reimbursed from federal funds with respect to bodily injury, death, and property damage is limited to a combined amount of \$2 million per occurrence with an aggregate of \$6 million applying separately to each annual period except as provided in Paragraph 7.5.11 e. below.

e. In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from federal funds will be allowed. These larger amounts will depend on circumstances and must be written for the individual project in accordance with standard underwriting practices.

7.6 Sanitary Provisions

The Contractor must, at its own expense, provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the Texas State Department of Health Services or of other authorities having jurisdiction.

7.7 Public Safety and Convenience

The safety of the public and the convenience of traffic must be regarded as of prime importance. Unless otherwise shown on the plans or except as herein provided, all portions of the highway must be kept open to traffic. It is entirely the responsibility of the Contractor to provide for traffic along and across the highway as well as for ingress and egress to private property.

Ingress and egress to private property must be provided as specified in the plans or as directed by the Engineer. **THE CONTRACTOR MUST PRESERVE ACCESS OF ENTRY AND EXIT FOR LANDOWNERS ADJACENT TO THE PROJECT.** The Contractor may construct detours or cause travel to be circuitous for a landowner, but must not prevent the access of any landowner to his/her property.

The Contractor must plan and execute its operations in a manner that will minimize any interference with traffic. The Contractor must secure the Engineer's approval of this proposed plan of operation, sequence of work, and methods of providing for the safe passage of traffic before it is placed into operation. If at any time during construction the approved plan does not accomplish the intended purpose, due to weather or other conditions affecting the safe handling of traffic, the Contractor must immediately make necessary changes therein to correct the unsatisfactory conditions. If due to rains or other reasons, the shoulders, slopes, and ditches become unsatisfactory for handling traffic, construction operations must be suspended and the base course or surface area must be opened to traffic. Where the specifications require or the Engineer directs that traffic be carried over or along the proposed work, construction operations must be so prosecuted and new material kept so placed and spread as to allow the passage of traffic in comfort and safety.

Where an Asphalt Surface Treatment is placed for the full width of one operation, traffic may be carried on the shoulder, slopes, and ditches subject to approval by the Engineer. During the operation of placing asphalt and aggregate, the surface or pavement should not be closed to traffic for a period of more than 45 minutes.

During construction of proposed structures, unless otherwise shown on the plans, the Contractor must provide and maintain detours, including temporary structures or crossovers of adequate structural design, as may be required for the safety and convenience of traffic. In addition to the above devices, Contractor must install and maintain proper temporary traffic control devices to ensure safety in work zones, during construction, and maintenance operations on that portion of the roadway. Installation and maintenance of the devices must be in accordance with the Texas Manual on Uniform Traffic Control Devices. Contractor must also install proper safety protective devices in accordance with federal, state and local laws and ordinances. Such safety devices must be installed and operated, as appropriate, at any roadway, railroad grade crossing, or bridge. Unless otherwise provided on the plans, the cost of constructing such temporary detours will be paid for in accordance with Paragraph 4.3, "Extra Work."

At night or otherwise, all equipment not in use must be stored in such manner and at such locations so as not to interfere with the safe passage of traffic.

The Contractor must provide and maintain flaggers at such points and for such periods of time as may be required to provide for the safety and convenience of the public and the Contractor's personnel, and as directed by the Engineer. Flaggers must be English-speaking, courteous, well informed, physically and

mentally able to effectually perform their duties in safeguarding and directing traffic and protecting the work, and must be neatly attired and groomed at all times when on duty. When directing traffic, flaggers must use standard attire, flags, and signals and follow the flagging procedures set forth in the Texas Manual on Uniform Traffic Control Devices for Streets and Highways ("TMUTCD").

7.8 Barricades, Danger, Warning, and Detour Signs, and Traffic Handling

The Contractor has the sole responsibility for providing, installing, moving, replacing, maintaining, cleaning, and removing, upon completion of work, all barricades, warning signs, barriers, cones, lights, signals, and other such types of devices and for handling traffic as indicated in the plans or as directed by the Engineer. All barricades, warning signs, barriers, cones, lights, signals, and other such type devices must conform to details shown on the plans or those indicated in the TMUTCD. All Traffic Control Devices used on this project must comply with the crashworthiness requirements of the National Cooperative Highway Research Program ("NCHRP") Report 350.

The Contractor may provide special signs not covered by plans to protect the traveling public against special conditions or hazards, provided however, that such signs are first approved by the Engineer.

7.9 Use of Explosives

Blasting is not allowed unless rock is encountered and, in the opinion of the Engineer, excavation cannot be accomplished with machines available in the area.

Where, in the opinion of the Engineer, blasting is necessary to complete excavation, all such blasting shall be performed by persons licensed by the City of Austin for blasting. All blasting, including methods of storing and handling of explosives and highly inflammable materials, must conform to federal, state, and local laws and ordinances. All City of Austin Ordinances must be complied with even though some or all of the blasting is done outside the city limits of the City of Austin.

The following is a list of requirements in addition to federal, state, and local laws and ordinances:

1. The Contractor must furnish the County with a Certificate of Blasting Insurance in the amount of \$300,000 for each contract, naming Travis County as an additional insured party, at least twenty-four hours prior to using explosives. A blasting permit must be obtained from the City of Austin at least five days prior to use of explosives. If blasting is covered under the Contractor's General Insurance Certificate for each contract, a separate blasting certificate will not be required.
2. The following public utility companies and City Departments must be notified in writing by the Contractor, on every occasion, at least 48 hours prior to the use of explosives: Water and wastewater, electric, gas, telephone, cable TV, and the City Engineering Department.
3. Explosive materials to be used must be limited to blasting agents and dynamite, unless prior approval of other materials is obtained in writing from the Engineer.

4. During blasting, all reasonable precautions must be taken to protect pedestrians, passing vehicles, and public or private property. Blasting mats or protective cover must be used when required by the Inspector, the permit, or by safe blasting practices.
5. All explosives must be stored in accordance with the City of Austin Code.
6. The Engineer or his/her representative have the right to limit the use of explosives and/or blasting methods which, in his/her opinion, are dangerous to the public or nearby property or anyone or anything.
7. The Contractor, at its expense, must promptly repair or replace all items known to be damaged as a result of the blasting. All claims of damage will be investigated by the County or by consulting firms approved by the County.
8. The Contractor must maintain accurate records throughout the blasting operations showing the type of explosive used, number of holes, pounds per hole, depth of hole, total pounds per shot, delays used, date and time of blast, and initials of the Inspector. The Contractor is fully responsible for all claims resulting from his/her blasting operation.
9. In advance of doing any blasting work involving the use of electric blasting caps within 200 feet of any railroad track, the Contractor must give at least 24 hours advance notice to the nearest Roadmaster, Section Foreman, Agent, Signal Maintainer, or Telegraph Operator with the request that his/her Superintendent be advised immediately of the pending use of explosives.

7.10 Protection of Adjoining Property

The Contractor must take proper measures to protect the adjacent or adjoining property which might be injured by any process of construction, and, in case of any injury or damage resulting from any act or omission on the part of or on behalf of the Contractor, the Contractor must restore at its own expense the damaged property to a condition similar or equal to that existing before such injury or damage was done, or it must make good such injury or damage in an acceptable manner.

7.11 Indemnification

7.11.1 THE CONTRACTOR AGREES TO AND MUST INDEMNIFY AND HOLD HARMLESS COUNTY AND ITS OFFICIALS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, SUITS, AND LIABILITY OF ANY KIND WHETHER MERITORIOUS OR NOT, INCLUDING WITHOUT LIMITATION ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENT ACT, NEGLIGENT ERROR OR NEGLIGENT OMISSION OF THE CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS ON ACCOUNT OF, ARISING OR RESULTING FROM, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF THIS AGREEMENT. The indemnities provided for in this Section 7.11 apply to any and all claims and amounts arising or recovered under the "Workers' Compensation Laws," Texas Civil Practice & Remedies Code Section 101.002 et seq., (Texas Tort Claims Act), and any other applicable federal or state laws regardless of whether the Contractor is wholly or

partially at fault. In addition, the indemnities provided for in this Section 7.11 apply to the Contractor or any of its subcontractors with respect to the manner or method of executing the work, failure to properly execute the work, or from defective work or materials.

7.11.2 The Contractor will not be released from these responsibilities until all claims have been settled and suitable evidence to that effect furnished the Commissioners Court.

7.11.3 The Contractor's attention is directed to the fact that pipelines and other underground installations as may be shown on the plans have been taken from the best available information. There may be other pipelines or installations. As provided for in this Section 7.11, the Contractor must indemnify and hold harmless the County from any and all suits or claims resulting from damage by the Contractor's operations to any pipeline or underground installation.

7.11.4

If any claim, or other action, that relates to the Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor must give written notice to County of the following information:

- (i) the existence of the claim, or other action, within ten (10) working days after being notified of it;
- (ii) the name and address of the person, firm, corporation, or other entity that made a claim, or that instituted any type of action or proceeding;
- (iii) the alleged basis of the claim, action, or proceeding;
- (iv) the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
- (v) the name or names of any person against whom this claim is being made.

7.11.5 Except as otherwise directed, the Contractor must furnish to County copies of all pertinent papers received by the Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

7.11.6 The provisions set forth in this Section 7.11 survive the expiration or termination of the Contract.

7.12 Contractor's Responsibility for Work

Until final written acceptance of the project by the Engineer, the Contractor will have the charge and care thereof and must take every precaution against injury

or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the work. The Contractor must rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and must bear the expense thereof except damage to the work due to Acts of God such as earthquakes, tidal waves, tornados, hurricanes, or other cataclysmic phenomena of nature, or acts of the public enemy or of governmental authorities. In case of suspension of work for any cause, the Contractor is responsible for the preservation of all materials. The Contractor must provide suitable drainage of the roadway and must erect temporary structures where required. The Contractor must maintain the roadway in good and passable condition until final acceptance, except as outlined below for opening the roadway to traffic.

Whenever in the opinion of the Engineer any roadway or portion thereof is in suitable condition for travel, it must be opened to traffic, as may be directed, and such opening will not be held to be in any way the final acceptance of the roadway or any part of it or as a waiver of any of the provisions of the contract. Where it is considered by the Engineer to be in the public interest and so ordered in writing by him/her, any substantially completed roadway or portion thereof may be opened to traffic when work is suspended for a considerable period of time at the convenience of the County, and the County will assume the responsibility for maintaining the entire roadway during the period of suspension.

The County in assuming responsibility for maintenance under this provision may require the work to be done in accordance with Paragraph 4.3, "Extra Work," or may do it with its own forces; provided, however, this will not change the legal responsibilities set out in Paragraph 7.11, "Indemnification."

Except for damage by the Contractor or that is caused by the Contractor's operations, the Contractor will not be responsible for repair of damage to existing appurtenances such as guard fences, bridge wings and railings, illumination assemblies, underpass structures, traffic barriers, delineator assemblies, signs, sign bridges, and traffic signals, where such damage is caused by (a) motor-vehicle, seacraft, aircraft, or railroad-train collision; or (b) vandalism. Such release from responsibility for damages includes only appurtenances, or portions thereof, which were existing at the beginning of the proposed work and for which no work is proposed under this contract; or for existing appurtenances that do require work under this contract but for which no work has yet begun. The release also includes damage to existing appurtenances and to existing pavement structure and other existing structures which are damaged by fire or by chemical spills which are a result of motor-vehicle, seacraft, aircraft, or railroad-train operation or accidents, except for damage caused by the Contractor's operations.

When shown on plans or otherwise authorized by the Engineer, upon completion of all work provided for in the contract for any individual limits, control, or project, the Engineer will make an inspection, and if the work is found to be satisfactory, the Contractor will be released from further maintenance on that portion of the work. Such partial acceptance will be made in writing and will in no way void or alter any terms of the contract.

7.13 Personal Liability of Public Officials

In carrying out the provisions of the contract or in exercising any power or authority granted hereunder, there will be no liability upon the Engineer or his

authorized assistants, either personally or otherwise, as they are agents and representatives of the County.

7.14 Responsibilities to the Railroad Companies

If the project crosses or is in close proximity to a railroad, the Contractor must conduct its operations in such manner so as not to interfere with, hinder, or obstruct any railroad company in any manner whatsoever in the use or operation of its trains or other property.

Whether the Contractor's work will be on or in the vicinity of an at-grade railroad crossing, involves incidental work on railroad right-of-way, or involves construction of a railroad grade separation structure, the Contractor must notify the Engineer and the railroad company's division engineer at least 3 days prior to the performance of any work on the railroad right-of-way, unless otherwise shown in the contract.

During the time this work is in progress the Contractor must assign such responsible supervisory personnel as are necessary to assure that due caution is observed by his/her workmen to keep the tracks and adjacent areas clear of debris and/or materials and equipment which might damage the tracks and railroad facilities or obstruct the safe passage of trains.

In addition to the above, if the work requires construction, other than paving or surfacing, in the vicinity of the tracks (or shoofly), the railroad company will provide flaggers during the periods when beams are being erected and slab forms are being both constructed and removed over the tracks, when pilings are being driven or shafts drilled adjacent to the tracks, and at such other times that the tracks may be subject to obstruction due to the construction operations. This flagging service will be paid for by the County as a Force Account Item with the railroad company and will be at no expense to the Contractor.

In the performance of said work no construction material or equipment must be stored on the railroad's right-of-way or nearer than 15 feet from the centerline of any tracks. No forms or temporary false-work is allowed within 8.5 feet horizontally and measured perpendicular to the centerline of any tracks or within 22 feet vertically above the top of rails of any track unless otherwise shown in the plans.

Subject to the above conditions, the Contractor is allowed access on railroad right of way and is authorized to cross the tracks for the purpose of constructing a grade separation structure and approaches if required by the plans.

When permitted by the railroad company, the Contractor will also be allowed to cross the tracks in hauling other roadway material across the tracks at points on the right of way near the structure. The railroad company will furnish and install and later remove standard crossing plank at the expense of the Contractor. If automatic protection devices are required for the temporary crossing as determined by the railroad company and the County, they will be provided without cost to the Contractor. It is the Contractor's responsibility to insure that the tracks are left clear of equipment and debris which would endanger the safe operation of railroad traffic. The Contractor must provide one crossing watchman on each side of the crossing to direct the hauling of equipment across the tracks. Any railroad flaggers required by the railroad company for protection of this crossing due to the hauling operations will be paid for by the County as a Force Account Item with the railroad company and will be at no expense to the

Contractor. Equipment traffic must be halted a safe distance away from the crossing upon the approach of railroad traffic.

The railroad company may require the Contractor to execute an "Agreement for Contractor's Temporary Crossing." If required, it will be the Contractor's responsibility to secure this agreement at no expense to the County.

7.15 Abatement and Mitigation of Excessive or Unnecessary Construction Noise

Throughout all phases of the construction of this project, including the moving, unloading, operating, and handling of construction equipment prior to commencement of work, during the project, and after the work is complete, the Contractor must make every reasonable effort to minimize the noise imposed upon the immediate neighborhood surrounding the area of construction. Particular and special efforts must be exercised by the Contractor to avoid the creation of unnecessary noise impacts on adjacent sensitive receptors in the placement of non-mobile equipment such as air compressors, generators, pumps, etc. The placement of temporary parked mobile equipment with the engine running must be such as to cause the least disruption of normal adjacent activities not associated with the work to be performed by the Contractor.

All equipment associated with the work must be equipped with components designed by the manufacturer wholly or in part to suppress excessive noise and these components must be maintained in their original operating condition considering normal depreciation. Noise-attenuation devices installed by the manufacturer such as mufflers, engine covers, insulation, etc., must not be removed nor rendered ineffectual nor be permitted to remain off the equipment while the equipment is in use.

7.16 Work Near Electrical Power Lines

Any operations by the Contractor which are located near any electrical power lines must be accomplished using established industry and utility safety practices. The Contractor must consult with the appropriate utility company prior to beginning any such work. All associated costs will be the responsibility of the Contractor.

7.17 Disposal of Excess Excavation

Permanent and temporary on-site disposal sites for excess excavated materials, if any, are indicated on the approved plans and SWP3. All permanent on-site fill areas for excavated material within the approved project right-of-way or easements must be composed of natural rock and soil material only, and may not include any putrescible, degradable wastes such as trash, metal, wood, brush, construction debris, or any other municipal solid waste as defined under state regulations, 30 TEX. ADMIN. CODE Chapter 330. All solid wastes and prohibited material must be recycled, if possible, or taken to a permitted landfill. The Contractor must dispose of excess excavated material from this project on-site only at locations indicated in the approved plans and SWP3. The Contractor must place on-site temporary stockpiled materials only at locations indicated on the approved plans and Storm Water Pollution Prevention Plan or approved by the Engineer that are not blocking drainage, not around waterways, not underneath tree driplines, not on unauthorized property or locations, and not on any environmentally sensitive areas.

Any off-site disposal of excess excavated material must comply with all permitting requirements of the County and any other applicable governmental jurisdictions. A County Development Permit is required for any disposal site in

the unincorporated area of Travis County. City of Austin has enforcement authority over water quality issues within its ETJ. A City of Austin permit is required for any disposal site within City of Austin's ETJ. An approved Storm Water Pollution Prevention Plan will also be required for the disposal site. Prior to off-site disposal, the Contractor must inform the project inspector of such disposal and provide proper project documentation or permits, or the Contractor will recommend revisions to the SWP3 that the Contractor believes are required for the disposal location.

7.18 Work in Waters of the United States

Work in waters of the United States or adjacent wetlands may require a U.S. Army Corps of Engineers Section 404 Permit or Authorization under a 404 Nationwide Permit (NWP). The County will obtain any required 404 Permits or Authorizations prior to commencement of construction and include any applicable construction mitigation measures in the project SWP3. The Contractor must adhere to any agreements, mitigation plans, and best management practices required by the Permit or NWP Authorization. If the Contractor makes changes in a project construction method that would result in changes of project impacts to waters of the United States or its adjacent wetlands, the Contractor will be responsible for obtaining any new required Section 404 Permit or Authorization and recommending appropriate revisions to the project SWP3. Only the County is authorized to make changes to the SWP3.

7.19 Work in Navigable Waters

Any operations by the Contractor relating to the placement of embankment or structures, or the rehabilitation of structures in or over the navigable waters of the U.S. may require a U.S. Army Corps of Engineers Permit. The County will obtain any required Permit prior to the commencement of construction and include any applicable construction mitigation measures in the project SWP3. The Contractor will be required to adhere to the stipulations and associated best management practices of the Permit and SWP3. If the Contractor makes any changes in a project construction method that would result in changes of project impacts to navigable waters of the U.S., the Contractor is responsible for obtaining any new required Permit and for obtaining the County's approval of the Contractor's recommended revisions to the project SWP3.

7.20 Work in the Edwards Aquifer Zone

If the Project includes work over the Transition Zone, Recharge Zone, or Contributing Zone of the Edwards Aquifer, or any other regulated aquifers as defined and delineated by the Texas Commission on Environmental Quality ("TCEQ"), the Contractor must follow best management practices and use and maintain those sedimentation and water pollution control devices as required by the Engineer and the approved project SWP3, and the Contractor must make every reasonable effort to minimize the degradation of water quality resulting from construction impacts.

If a Water Pollution Abatement Plan is required by the TCEQ, any modifications to the approved Plan will require the Engineer's approval and will be coordinated through TCEQ by the County.

7.21 Storm Water Pollution Prevention Plan (SWP3) and Erosion and Sedimentation Control ("ESC")

The SWP3 includes specified sediment controls and other structural and non-structural practices to prevent off-site discharges of sediment and other pollutants to adjacent waterways and off-site areas for the project. The Contractor must install and maintain the ESC and other controls until final stabilization is completed. The Engineer may direct the Contractor to adjust plan locations or add footage to the approved SWP3 and ESC plan in areas where it is observed to be inadequate to prevent off-site discharges and sedimentation. This responsibility for sediment control applies only to areas disturbed by the project construction activities and does not include upstream or pre-existing erosion conditions.

Prior to beginning any construction, the first phase of the temporary ESC measures and all tree fencing required must be installed by the Contractor. Prior to the installation of this first phase, the Engineer will meet the Contractor in a field pre-construction conference to direct precise locations of controls for maximum effectiveness. Minor adjustments to plan locations and additional footage will be paid for at the contract unit price. The second phase of ESC will consist of controls placed during or after rough cut and fill operations as specified in the plans and SWP3, with precise locations approved by the Engineer.

The Contractor must inspect the sediment and other SWP3 controls on an on-going basis and after every significant rainfall to determine if the controls are intact and functioning and to observe if sedimentation has exceeded specifications. The Contractor must perform and complete all necessary repairs and remove excess sediment to designated spoil areas within 48 hours of inspection or County notification, or as soon as conditions begin to dry after rainfall. Repair and maintenance of temporary ESC must be the first work performed after rainfall events as regular operations resume.

The Contractor will be paid by the linear footage of controls installed and measured in place. All maintenance and repair of ESC due to construction and runoff disturbance and all sediment removal will be subsidiary to ESC Contract items unless designated as a separate line item for payment in the Schedule of Items.

The Contractor is also responsible for following the limits of construction, clearing, temporary spoils storage, permanent spoil disposal, staging areas, and haul roads required in the approved plans and SWP3, and for limiting these areas to the minimum necessary to perform the required work. The Contractor must utilize only on-site area(s) outside the 100-year flood plain as designated on the approved plans for temporary stockpiling and staging areas during construction or as approved by the Engineer. Additional temporary ESC and re-vegetation will be required for these areas.

The Contractor must not discharge pumped water containing suspended solids from excavations or stream crossings off-site or into waterways without taking measures to prevent sedimentation of the waterway. Care must be taken when conducting any construction operations adjacent to a flowing stream or body of water to avoid sedimentation of the waterway. Special controls for de-watering activities may be required in the Special Provisions. The Contractor must also implement controls as required for construction site entrance and exits, concrete truck wash-out, and spills of industrial materials.

The Contractor must implement temporary stabilization of areas where construction has temporarily ceased as required, and final site stabilization measures as specified, including seeding, watering, and mulching to re-establish grass cover for permanent erosion control. When permanent re-vegetation and final site stabilization is deemed complete by the Engineer, the controls and accumulated sediment must be removed by the Contractor except for any controls that are directed to remain by the Engineer.

7.22 Tree Preservation

Trees on the project must be saved in accordance with the approved plans and the County Code Chapter 108 for Tree Preservation. All trees designated to be saved must be protected with specified fencing to prevent damage from construction activities and root zone compaction. The Contractor, at the direction of the Engineer, must attempt to save any trees on the project that may not have been indicated for preservation but need not be removed in order to construct the project. The Contractor must maintain the tree fencing in place until construction is completed and perform all work in a manner that will not damage trees and undisturbed areas to be preserved.

Any trees removed which are deemed by the Engineer to be infected with oak wilt disease must be disposed of using acceptable methods to prevent the spread of the disease to adjacent areas.

7.23 Measures to Control Dust

Throughout all phases of the construction of this project, including detour construction, excavation, embankment, hauling, stockpile, and topsoil placement, the Contractor must make every reasonable effort to control and minimize the dust resulting from construction operations and traffic movement. Control measures must follow the approved SWP3 for the project and must include, but are not limited to, authorized application of water or asphalt emulsion on construction sites, detours, haul road, stockpiles, or other areas specifically associated with this project. It is the Contractor's continuous responsibility at all times, including nights, holidays, and weekends until acceptance to maintain the project site relatively free of dust in a manner which will cause the least inconvenience to the public. All costs of measures to control dust will be considered subsidiary to the various items of the Contract.

7.24 Site Burning

Site burning will not be permitted without the explicit written consent of the Engineer and must comply with all applicable Texas Air Quality Control Board regulations and local fire and water pollution control requirements.

7.25 Hazardous and Solid Waste Management

Any hazardous materials brought on to the project site for use by the Contractor or any subcontractor, such as fuel, explosives, automotive fluids, and batteries must be used, transported, stored, and disposed of in accordance with all federal, state, and local requirements and the approved SWP3 for the Project. Any hazardous material spills committed by the Contractor or any subcontractor must be cleaned up by the Contractor or subcontractor in accordance with all applicable laws and regulations, and written notification must be given to the Engineer as soon as practical. If large quantities of hazardous materials are involved, or waterways or storm sewers are impacted, such spills may require

written notification by the Contractor or subcontractor to local or state emergency response personnel.

All trash, including any solid waste and construction debris, generated by the Contractor or any subcontractor or Project must be strictly controlled by the Contractor and disposed of in accordance with all federal, state, and local requirements and the approved SWP3 for the Project.

7.26 Other Requirements

In addition to the requirements set forth in this Item 7, the Contractor must also comply with applicable requirements set forth in the National Environmental Policy Act ("NEPA"), including Environmental Protection Agency regulations (40 C.F.R. Part 1500-1508) and the 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. In addition, the Contractor must comply with applicable requirements set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, as appropriate and all other applicable federal regulations covering environmental protection.

7.27 Changes

The Contractor must inform County regarding the following changes:

7.27.1 problems, delays, or adverse conditions which will materially affect or impair the ability of Contractor or any of its subcontractors to meet project or schedule goals or objectives; and

7.27.2 favorable development that enables meeting time schedules or objectives sooner or at less cost than anticipated, and favorable developments that produce more beneficial results than originally planned.

**ITEM 8
PROSECUTION AND PROGRESS**

8.1 Subletting or Assigning of Contract

The Contractor must not assign, sell, transfer, or otherwise dispose of the contract or any portion thereof, or his/her rights, title, or interest therein without the approval of the Commissioners Court. The Contractor must not sublet any portion of the contract without the written approval of the Purchasing Agent upon recommendation from the Engineer. No subcontract will in any case relieve the Contractor of his/her responsibility under the contract and bond.

The Contractor must perform with its own organization and with the assistance of workmen under its immediate superintendent, work of a value not less than 50 percent of the value of all work encompassed by the contract exclusive of items not commonly found in contracts for similar work, or which require highly specialized knowledge, craftsmanship, and/or equipment not ordinarily available in the organizations of contractors performing work of the character embraced in the Contract. The Contractor must give assurance that not less than the minimum wage for labor and not more than the maximum amount to be deducted for board, if furnished, as stated in the governing provisions will apply to labor performed on all work sublet, assigned, or otherwise disposed of in any way. Written consent to sublet, assign, or otherwise dispose of any portion of the

contract will not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract.

8.2 Prosecution of Work

Prior to beginning construction operations, the Contractor must submit to the Engineer a chart or brief outlining the manner of prosecution of the work that the Contractor intends to follow in order to complete the contract within the allotted time. The Contractor must begin the work to be performed under the contract within 14 calendar days after receiving a written "Notice to Proceed" and must continuously prosecute same with such diligence as will enable the Contractor to complete the work within the time limit specified. The Contractor must notify TNR's Project Manager at least 24 hours before starting construction operations at any point. The Contractor must not open up work to the detriment of work already begun. The beginning, sequence, and prosecution of the work will be governed by the orders of TNR's Project Manager, the Purchasing Agent upon the recommendation of the Engineer and the Contractor shall conduct its operations so as to impose a minimum interference to traffic.

In the event of damage to existing appurtenances, etc., which are not shown on the construction plans, marked on the ground or visible in the field, the County (1) may require the damage to be repaired in accordance with Paragraph 4.3, "Extra Work;" (2) may repair it with its own forces; or (3) may award another contract for the repair; provided, however, this does not change the legal responsibilities set out in Paragraph 7.11, "Indemnification".

The Contractor must plan and prosecute his/her work so as not to interfere with or hinder the completion of the work required for this damage repair.

The observance of this provision is an essential part of the work to be done under the contract. No direct compensation will be allowed for fulfilling this requirement as such work is considered subsidiary to the various Contract items.

An extension of time will be granted, if necessary, for delays caused to the Contractor by this damage-repair work. It is specifically understood, however, that delays caused by this damage-repair work will not be considered as a basis for a claim by the Contractor.

Where applicable, if utility construction and/or adjustment of existing utilities will not be completed before the Contractor on this project begins construction operations, then the Contractor must coordinate with and work in conjunction with the utility companies during their reallocations if and when necessary to maintain the progress of the work.

It is the responsibility of the Contractor on this project to stockpile materials and prosecute the work in such a manner and sequence that there will be no interference with the utility work. The Contractor must also allow utility owners free ingress and egress over the right of way.

No additional compensation or delay damages will be allowed or considered for any hindrance or delay in construction operations that may be attributed to this utility work, to the acquisition of necessary right of way and easements, or to observance of the requirements herein outlined.

8.3 Contractor's Proposed Schedule

The Contractor must prepare and submit to the Engineer for approval a schedule in Microsoft Project format, unless otherwise approved by the Engineer, that is on a Critical Path Method (CPM) form, and the schedule must be consistent with the latest proven construction scheduling techniques. The Proposed Schedule must be consistent with the Sequence of Construction in the approved plan.

CPM diagrams must show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. The basic concept of the CPM schedule must be to show how the start of a given activity is dependent on the completion of preceding activities and how its completion restricts the start of subsequent activities.

Upon the request of the Engineer, the Contractor must participate in a review and evaluation of the proposed schedule with the Engineer. Any revisions necessary as a result of this review must be resubmitted for approval within 10 calendar days after the review meeting. The approved schedule will then be the schedule to be used by the Contractor for planning, organizing, and performing the work. If the Contractor thereafter desires to make changes in its method of operating and scheduling, it must meet with the Engineer to discuss the proposed changes. A change may be considered major if the revised time is changed from the original plan to the degree that it affects the contract completion date. Changes in activities originally having slack time and normally not affecting the contract completion date may be considered minor. However, if the cumulative effect of several minor changes affects the contract completion date, these may be considered major. The construction schedule may need to be revised if major changes are to be made. Major changes can only be approved by execution of Change Orders. Within 10 calendar days after the proposed changes are approved by the Owner, the Contractor will submit to the Engineer for final review and approval a revised schedule that incorporates these changes.

The Contractor must plan and prosecute its work so as not to interfere with or hinder the completion of the work in progress on adjoining projects. The Contractor must furnish two copies of all schedules and progress reports to the Engineer.

If, in the sole opinion of the Engineer, the Contractor's progress falls behind the approved construction schedule, the Contractor must take the appropriate steps as may be necessary to improve its progress.

8.4 Contractor's Progress Reporting

The Contractor must, within 30 days after the date of contract award, prepare and submit to the Engineer for approval, its Progress Reporting System which must include at least the following:

Monthly Progress Report – At the beginning of each month during the contract time, the Contractor must provide a report to the Engineer that includes the following information regarding the preceding month: (1) a summary narrative of on-site activities and accomplishments, (2) information regarding any problems anticipated in the upcoming month, and (3) activities scheduled for the following month. This report must also include the following:

Construction Schedule and Progress Chart - A current construction schedule that reflects a breakdown by activity of all contract work. The progress must be updated based on

actual percentage of work physically completed for each activity.

A Construction Schedule and Progress Chart must be submitted with each monthly Partial Payment Request. A Partial Payment Request will be rejected if the submitted Construction Schedule and Progress Chart is not in compliance with this provision.

8.5 Workers and Equipment

All workers employed by the Contractor must have such skill and experience as will enable them to properly perform the duties assigned them. Any person employed by the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform his/her work in a proper and skillful manner, or who is disrespectful, intemperate, disorderly, or otherwise objectionable, must at the written request of the Engineer be forthwith discharged and must not be employed again on any portion of the work without the written consent of the Engineer. In the pre-construction conference, the Contractor must submit the names and phone numbers of an English-speaking superintendent and a trench safety "Competent Person" as certified by OSHA pursuant to 29 C.F.R. Part 1926 Subpart P. The superintendent and Competent Person can be the same person. The Contractor must furnish such suitable machinery, equipment, and construction forces as may be necessary, in the opinion of the Engineer, for the proper prosecution of the work, and failure to do so may cause the Engineer to withhold all estimates which have or may become due, or the Engineer may suspend the work until his/her requests are complied with.

8.6 Temporary Suspension of Work

8.6.1 The Engineer will have authority to suspend the work, wholly or in part, for such period as he/she may consider necessary, and the "Time Charge" will be suspended during such period. Notice of such suspension with the reasons therefor will be given the Contractor in writing. The Contractor must not suspend work without written authority of the Engineer.

8.6.2 The following clauses apply in the event the Engineer orders suspensions of work:

8.6.2.1 If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or Contract time is due as a result of such suspension or delay, the Contractor must submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request must set forth the reasons and support for such adjustment.

8.6.2.2 Upon receipt of the Contractor's request for adjustment, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the Contract is warranted.

8.6.2.3 No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

8.6.2.4 No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

8.7 Computation of Contract Time for Completion.

The Contractor must complete the work within the number of days stated in the contract. For the purpose of computation, the time will begin on the date of the Notice to Proceed.

On or before the first day of each month, the Construction Administrator will furnish the Contractor a monthly contract time statement on forms furnished by the County, showing the number of working days charged up to and including the 25th day of the preceding month, total number of working days allowed in the contract, and the working days remaining under the contract. The Contractor will be allowed 10 calendar days in which to protest the correctness of the statement. This protest must be in writing and must show cause. Not filing a protest within the allowed ten days for any time statement will indicate the Contractor's approval of the time charges as shown on that time statement and future consideration of that statement will not be permitted. If the satisfactory completion of the contract will require unforeseen work or work and materials in greater amounts than those set forth in the contract, then additional working days or suspension of the time charge will be allowed the Contractor equal to the time which, in the opinion of the Engineer, the work as a whole is delayed.

A Monthly Contract Time Statement must be submitted with each Partial Payment Request. A Partial Payment Request will be rejected if the monthly Contract Time Statement is not submitted. If the Monthly Contract Time Statement is being protested by the Contractor, a copy of the written protest letter must be included in the Partial Payment Request. Once a previously protested Contract Time Statement has been approved by the County, the Contractor must submit the approved statement with its next Partial Payment Request.

8.8 Failure to Complete Work on Time

8.8.1 If the Contractor fails to complete the Contract in the working days specified, the time charge will be made for each working day thereafter.

The time set forth in the Contract for the completion of the work is an essential element of the Contract. For each working day under the conditions described in the preceding paragraph that any work remains uncompleted after the expiration of the working days specified in the Contract, together with any additional working days allowed, the amount per day given in the following schedule will be deducted from the money due or to become due the Contractor, not as a penalty, but as liquidated damages, for each calendar day or work day overrun in Contract time.

8.8.2 In the event of the failure of the Contractor to timely complete the work, it is agreed that the County's actual damages would be extremely difficult, impractical, or impossible to calculate and, therefore, the amount of liquidated damages set forth herein is agreed to be a reasonable estimate of the County's actual damages and will be retained as liquidated damages and not as a penalty.

For Amount of Original Contract		Amount of Daily Contract Administration Liquidated Damages per Working Day
From More Than	To and Including	
\$0	100,000	200
100,000	500,000	450
500,000	1,000,000	550
1,000,000	2,000,000	700
2,000,000	5,000,000	850
5,000,000	10,000,000	1300
10,000,000	15,000,000	1700
Over 15,000,000		2000

8.8.3 If the Contractor fails to complete the work within the Contract time specified or if the project is suspended because of action of a third party, the Contractor must assume all risks and must bear all costs for his/her labor, machinery, materials in place or in inventory, environmental mitigation, and traffic rerouting which may be impacted by the failure to complete the project in a timely manner.

8.8.4 Where there has been an overrun in Contract time, the following principles will apply in determining the cost of a project that is eligible for Federal-aid reimbursement:

8.8.4.1 a proportional share as used in this Subsection is the ratio of the final Contract construction costs eligible for federal participation to the final total Contract construction costs of the project.

8.8.4.2 where construction engineering ("CE") costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damages rates cover only CE expenses, the total CE costs for the project will be reduced by the assessed liquidated damages amount prior to configuring any federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess will be deducted from the federally participating Contract construction cost for determining the final federal share.

8.8.4.3 where the County is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total Contract construction amount that would be eligible for federal participation will be reduced by a proportional share of the total liquidated damages amounts assessed on the project.

8.8.4.4 where liquidated damages include extra anticipated non-CE costs due to delays, the amount assessed will be used to pay for the actual non-CE expenses incurred by the County and, if a federal participating item(s) is involved, to reduce the federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred by the County, a proportional share of the excess will be deducted from the federally participating Contract construction cost of the project before the federal share is figured.

8.8.5 The rate schedule above sets forth a range of liquidated damages to cover the costs of completing the work under contract and the following costs and charges incurred by the County, in connection with Contractor's failure:

8.8.5.1 the estimated average daily construction engineering (CE) costs associated with the work under contract;

8.8.5.2 shutdowns for maintenance or similar costs;

8.8.5.3 breakdowns;

8.8.5.4 suspensions or stop work orders for a violation of safety or pollution regulations;

8.8.5.5 shutdowns for construction accidents;

8.8.5.6 a delay in delivery of materials, absent unusual market conditions, such as an industry-wide strike, natural disaster or area-wide shortage;

8.8.5.7 retaining detours for an extended time or similar costs;

8.8.5.8 additional demurrage or similar costs;

8.8.5.9 road user delay costs or similar costs;

8.8.5.10 delays due to inclement weather;

8.8.5.11 delays due to utility, railroad and right-of-way clearance;

8.8.5.12 delays due to interference by railroad or utility companies with Contractor's operations.

8.8.6 In case the cost so incurred by the County is less than the amount which would have been payable under the Contract if it had been completed by the Contractor, the Contractor will be entitled to receive the difference. In case such cost exceeds the amount which would have been payable under the Contract, then the Contractor and the Surety will be liable and must pay to the County the amount of such excess.

8.9 Abandonment of Work or Default

If the Contractor fails to begin the work within the time specified, fails to perform the work with sufficient workmen and equipment, has insufficient materials to insure the completion of the work within the contract time, performs the work unsuitably, neglects or refuses to remove materials or perform anew such work as may have been rejected as being defective or unsuitable; discontinues the prosecution of the work without authority; becomes insolvent or is declared bankrupt; commits any act of bankruptcy or insolvency; or makes an unauthorized assignment for the benefit of any creditor; or from any other cause whatsoever does not carry on the work in an acceptable manner, the Purchasing Agent, upon recommendation of the Construction Administrator, may give notice in writing to the Contractor and his/her Surety of such delay, neglect, or default, specifying the same. If the Contractor within a period of 10 days after such notice does not proceed in accordance therewith, then the County will, upon written certification from the Purchasing Agent of the fact of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power

and authority, without violating the contract, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of work) that has been delayed, to take the prosecution of the work out of the hands of the Contractor and to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and enter into an agreement for the completion of the contract according to the terms and provisions thereof or use such other methods as in his/her opinion may be required for the completion of the contract in an acceptable manner. All costs and charges incurred by the County, together with the cost of completing the work under contract, will be deducted from any money due, or which may become due, the Contractor. In case the cost so incurred by the County is less than the amount which would have been payable under the contract if it had been completed by the Contractor, the Contractor will be entitled to receive the difference. In case such cost exceeds the amount which would have been payable under the contract, then the Contractor and the Surety will be liable and must pay to the County the amount of such excess.

8.10 Termination of Contract

The County may, by written agreement, subject to the following conditions, terminate said contract or any part thereof:

8.10.1 in the event of a national emergency and work to be performed under a contract is stopped directly or indirectly because of the freezing or diversion of materials, equipment, or labor as the result of an order or a proclamation of the President of the United States and/or an order of any federal authority;

8.10.2 if during the budget planning and adoption process the Travis County Commissioners Court fails to provide funding for this contract for their fiscal year following the beginning of this Contract;

8.10.3 if there has not been another issuance of bonds to fund the completion of this or other Capital Improvement Projects in Travis County;

8.10.4 in the event of a court order directly prohibiting further construction activities; or

8.10.5 in the event of any third party actions preventing the County from allowing construction to continue, and the circumstances or conditions are such that it is impossible within a reasonable time to proceed with a substantial portion of the work, as determined by the Engineer.

When contracts, or any portion thereof, are definitely terminated or canceled, and the Contractor released before all items of work included in his/her contract have been completed, payment will be made for the actual number of units of items of work completed at contract unit prices, and no claim for loss of anticipated profits will be considered. Reimbursement for organization of the work and moving equipment to and from the job will be considered where the volume of the work completed is too small to compensate the Contractor for these expenses under the contract unit prices, the intent being that an equitable settlement will be made with the Contractor, as determined by the Engineer.

Acceptable materials obtained by the Contractor for the work that have been inspected, tested, and accepted by the Engineer, and that are not incorporated in the work may, at the option of the Engineer, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Engineer.

If such terms and conditions of cancellation of all or any part of a contract cannot be agreed upon, the original contract will remain in full force and effect.

Termination of the contract, as stated above, will not relieve the Contractor or his/her surety of the responsibility for replacing defective work as required by the contract.

8.11 Railroad Construction

When work to be done within the limits of a project involves a railroad company, the Contractor will be required to plan and prosecute his/her own work to avoid interference with, or hindrance to, that portion of the work that is the responsibility of the railroad company. The observance of this is an essential part of the work to be done under the Contract. No direct compensation will be allowed for fulfilling this requirement as such work is considered subsidiary to the various items of the Contract.

An extension of time will be granted, if necessary, for delays caused to the Contractor by the railroad company. It is specifically understood, however, that delays caused by the railroad company will not be considered as a basis for a claim by the Contractor.

8.12 Hazardous Materials.

Materials utilized in the project must be free of any hazardous material as defined in Item 1, "Definition of Terms."

When the Contractor encounters existing materials on sites owned or controlled by the County or in required material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor must immediately notify the Engineer. The County will be responsible for the testing for and removal or disposition of hazardous materials on sites owned or controlled by the County. The Engineer may suspend the work wholly or in part during the testing, removal, or disposition of hazardous materials on sites owned or controlled by the County.

When materials delivered to the project are suspected by visual observation or smell to contain hazardous materials, they must be tested for contamination. All testing must be by a commercial laboratory approved by the Engineer. The testing for, removal, and disposal of such hazardous materials delivered to the project by the Contractor must be at the Contractor's own expense. No suspension of the "Time Charges" and no extensions of working time will be granted to the Contractor resulting from hazardous material which the Contractor has delivered.

The Contractor must indemnify and save harmless the County and its representatives for any damages arising directly or indirectly out of the delivery, generation, and/or disposition of hazardous materials delivered to the County-owned or controlled sites or generated by the Contractor in connection with any work done by the Contractor on County-owned or controlled sites. Further, the Contractor must indemnify and save harmless the County and its representatives from any liability or responsibility arising out of the delivery, generation and/or disposition of any hazardous materials obtained, processed, stored, shipped, etc., on sites not owned or controlled by the County. Should the County be required to make any payments or pay any costs or fees or make restitution as a result of the Contractor's actions, the Contractor must reimburse the County for any and all payments of moneys.

The rules, regulations, policies, procedures, standards, applications and reports of the various State agencies including but not limited to the Texas Commission on Environmental Quality (TCEQ), the Texas Water Well Drillers Board (TWWDB) and the Railroad Commission (RRC), and of the applicable federal departments and agencies including but not limited to the Environmental Protection Agency (EPA), Department of Energy (DOE), Department of Transportation (DOT) and the Occupational Safety and Health Administration (OSHA) will apply to all operations of the Contractor, including but not limited to the following: sampling, plugging, cleaning, testing, removing, disposing, and backfilling.

8.13 Failure to Maintain Storm Water Pollution Prevention Plan (SWP3) Controls

The Contractor is required to maintain erosion and sediment controls, tree fencing and other storm water discharge structural and non-structural controls in accordance with the approved plans, specifications, and SWP3 on a regular basis. These controls must be maintained and repaired within the time frames specified in the SWP3 Inspection Report provided weekly or bi-weekly to the Contractor by the County in order to accomplish their intended purpose. In case of failure to maintain such controls as directed by the Engineer, the Engineer reserves the right to employ outside assistance to provide the necessary corrective measures. Such incurred direct costs plus project engineering costs will be deducted from any money due or to become due to the Contractor.

ITEM 9 MEASUREMENT AND PAYMENT

9.1 Measurement of Quantities

All work completed under the contract will be measured by the Engineer according to United States Standard Measures unless otherwise specified. All longitudinal measurements for surface area will be made along the actual surface of the roadway and not horizontally, and no deduction will be made for structures in the roadway having an area of 9 square feet or less. For all transverse measurements for areas of base courses, surface courses, and pavements, the dimensions to be used in calculating the pay areas will be on the neat dimensions and shall not exceed those shown on plans or ordered in writing by the Engineer. All materials which are specified for measurement by the cubic yard in vehicles must be hauled in approved vehicles and measured therein at the point of delivery on the roadway. Vehicles for this purpose may be of any type or size satisfactory to the Engineer provided that the body is of such type that the actual contents may be readily and accurately determined. Each approved vehicle must bear an identification mark indicating specific approval by the Engineer and also a permanent, plainly legible number. The Inspector may reject all loads not hauled in such approved vehicles.

In those items which provide for payment by "Plan Quantity," the measurement of such quantities must be made by standard methods of calculation, using the methods described in the governing specification, and may or may not represent the exact quantity of material moved, handled, or placed in the roadway or structure during the execution of the contract.

The quantities shown on the plans, adjusted in accordance with the governing specification when required, will be the quantity paid for.

When the Engineer and Contractor agree in writing, the final payment for the pay items of sprinkling, rolling, overhaul, additional quarter mile haul, stripping, scraper work, disking, blading, bulldozer work, road grader work, or mobilization

may be fixed at plan quantity if the Contract quantity multiplied by the unit price is less than \$250. This provision will apply regardless of whether the final quantity required is greater than or less than the quantity stated in the Contract.

9.2 Scope of Payment

The Contractor must accept the compensation, as provided in the contract, in full payment for furnishing all materials, supplies, labor, tools, and equipment necessary to complete the work under the contract; for any loss or damage which may arise from the nature of the work, from the action of the elements, and from any unforeseen difficulties which may be encountered during the prosecution of the work, until the final acceptance by the Engineer, except where there is conclusive evidence that such damage is due to inadequate design and not to improper prosecution of the work; for all risks of every description connected with the prosecution of the work; for all expenses and damages which might accrue to the Contractor by reason of delay in the initiation and prosecution of the work for any cause whatsoever; for any infringement of patent, trademark, or copyright; and for completing the work according to the plans and specifications.

The payment of any current or partial estimate does not in any way affect the obligation of the Contractor at its own cost to repair or renew any defective parts of the construction and to be responsible for all damages due to such defects if such defects or damages are discovered on or before the final inspection and acceptance of the work.

9.3 Payment for Extra Work

Extra work ordered, performed, and accepted will be paid for according to the terms of "Change Orders," "Change Directives," or on the "Force Account" basis as directed by the Engineer.

9.4 Force Account

When extra work is ordered to be performed on the "Force Account" basis, the Contractor will be paid "actual field cost" plus 15 percent. "Actual field cost" is hereby defined to include Contractor's cost for workers, such as foreman, timekeepers, mechanics, and laborers, and materials, supplies, trucks, rentals on machinery and equipment for time actually employed or used on such extra work, plus actual equipment, for time actually employed or used in such extra work plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water, and similar operating expenses, and all necessary incidental expenses incurred directly on account of such extra work, including Social Security, Old Age Benefits, and other payroll taxes, and a ratable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability, Property Damage, workers' compensation, and other insurance as may be required by any law or ordinance or as directed by the County, or as agreed to by the County and the Contractor. The County may direct the form in which accounts of "actual field cost" must be kept, and records of those accounts must be made available to the County. The charges for (1) materials which are tangible personal property incorporated into the project or completely consumed at the job site, and (2) services required by or integral to the performance of the contract must be separated from all other charges, including the cost of labor, overhead, and materials which do not become part of the finished project or are not completely consumed at the job site. Unless otherwise specified, prices for use of machinery and equipment will be determined by using 80 percent of the latest schedule of Equipment Ownership Expense adopted by Associated General Contractors of America. Where practicable, terms and prices for use of

machinery and equipment will be incorporated in a change order. Fifteen Percent of "actual field cost" to be paid to the Contractor will cover and compensate the Contractor for its profit, overhead, general superintendent, field office expense, and all other elements of cost and expense not embraced within "actual field cost" as herein defined, save that where the Contractor's field office must be maintained primarily on account of such extra work, in which case the cost to maintain and operate the same will be included in the "actual field cost."

The compensation, as herein provided for, must be received by the Contractor as payment in full for extra work done on the "Force Account" basis. The Contractor's representative and the Inspector will compare records of extra work done on the "Force Account" basis at the end of each day. Copies of these records will be made upon suitable forms provided for this purpose by the County and signed by both the County's and the Contractor's representatives, one copy being forwarded to the Construction Administrator and one to the Contractor. All claims for "Extra Work" performed on the "Force Account" basis must be submitted to the Engineer by the Contractor upon certified statements to which must be attached certified copies of invoices covering the cost of, and the freight charges on, all materials used in such work, and such statements must be filed not later than the tenth day of the month following that in which the work was actually performed. The statements must separate charges for materials incorporated into the project or completely consumed at the job site and services required by or integral to the performance of the contract from all other charges.

When extra work is ordered to be performed on the "Force Account" basis, and the estimated cost is less than \$500, payment of same may be made on the basis of an invoice submitted to the Engineer by the Contractor. The invoice must include the Contractor's actual cost for materials, labor, equipment, and incidentals necessary to complete the extra work. The invoice must separate charges for materials incorporated in the project or completely consumed at the job site and services required by or integral to the performance of the contract from all other charges.

The invoice must also include additional compensation specified above, in this Paragraph 9.4, as well as the cost of the Contractor's bond on the extra work.

9.5 Partial Payments

On or before the first day of each month, the Contractor must submit to the Construction Administrator a statement showing the total value of the work performed up to and including the 25th day of the preceding month. The statement must also include the value of all sound materials delivered to the job site and to be included in the work whether stated in the Contract as a lump sum or a unit item which in the opinion of the Engineer is acceptable. The statements must separate charges for materials which are tangible personal property incorporated into the project or completely consumed at the job site and services required by or integral to the performance of the contract from all other charges. The Engineer will examine and approve or modify and approve such statement. To facilitate County tracking of minority purchasing goals, the Contractor must specify in its statement each month, and again in the Contractor's final billing, the dollar amount of the statement which can be attributed to a subcontractor qualified as a Historically Underutilized Business (HUB) under the Travis County HUB Program Purchasing Requirements.

In addition to the above, and upon presentation of copies of invoices and freight bills, an estimate must be made and included for the invoice the cost of acceptable reinforcing steel, structural steel, pre-cast concrete members, stone,

gravel, sand, or any other nonperishable materials delivered on the work or in acceptable storage places and which have not been used in the work prior to such estimate.

For acceptable structural components (structural steel, concrete members, piling, etc.) fabricated in accordance with details shown on the plans and stored in any location approved by the Engineer, an estimate must be made and included for the invoice cost, exclusive of any transportation costs, of the material involved after the Contractor has furnished the Engineer with a copy of the invoice. Only materials which are completely constructed and/or fabricated on the Contractor's order for a specific project, and are so marked, and on which an approved Test Report has been issued, are eligible for inclusion in the Contractor's Partial Payment Request. This will also include the following items: concrete traffic barriers, pre-cast-concrete box culverts, concrete piling, reinforced-concrete pipes, and illumination poles.

Written approval must be obtained from the Engineer before any repairs are made to fabricated material that has been approved for storage, and the Contractor must bear all expenses of the repairs. After material has been fabricated and placed in acceptable storage and has been paid for based on a monthly estimate, the Contractor must furnish the Engineer, within 30 days of date of payment, a copy of the paid invoice. If this is not furnished, partial payment for fabricated material in acceptable storage will be omitted from the next estimate.

For pre-cast concrete products which may be completely fabricated or constructed by the Contractor for which invoice or freight bills are not pertinent, and which have been stored in acceptable storage places, and which have not been used in the work, an estimate will be made and included for 60 percent of the Contract unit price for the specified products.

Partial payments for material on hand or in acceptable storage must not exceed the Contract price.

For temporary erosion controls and tree fencing, the Contractor will be paid by the linear footage of controls installed and measured in place, including additional footage and placement that varies from the original approved plan.

Within 30 days after receipt of an acceptable invoice, the County will either (1) notify the Contractor in writing of any objections which the County has or (2) pay the Contractor the amount invoiced, less 5 percent of the amount thereof, which 5 percent will be retained until final payment, and further less all previous payments and all sums that may be retained by the County under the terms of this contract. It is understood, however, that in case the whole work is near completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, the County may pay a reasonable and equitable portion of the retained percentage to the Contractor, or the Contractor, at the County's option, may be relieved of the obligation to fully complete the work and, thereupon the Contractor will receive payment of the balance due it under the contract subject only to the conditions stated under Paragraph 5.16, "Final Payment". Partial estimates showing an amount of work performed since the last preceding estimate of less than \$1,000.00 may be withheld until the amount of work performed on a partial estimate is at least \$1,000.00.

In order to be considered acceptable, an invoice must include: (1) the name, address, telephone number of the Contractor and similar information in the event payment is to be made to a different address, (2) the County contract number, (3)

the Purchase Order number, (4) a Schedule of Values as outlined in the Contract, and (5) any additional payment information which may be called for by this Contract.

9.6 Acceptance and Final Payment

When the work provided for in the contract has been completed by the Contractor, and all parts of the work have been approved and accepted by the Engineer, a final estimate showing the amount of the work and the amount due the Contractor under the contract will be prepared by the Engineer. The amount of the final estimate, less any sums previously paid under the contract will be paid to the Contractor.

Neither the final payment nor the remaining retained percentage will become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, another statement establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Construction Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor must refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

The acceptance of final payment constitutes a waiver of all claims by the Contractor.

9.7 Plan Quantity Measurement

When plan quantity measurement is specified for an item, adjustment of quantities will be made according to the following:

If the quantities measured as outlined under "Measurement" vary from those shown in the proposal and on the "Estimate and Quantity" sheet by more than 5 % (or as stipulated under the measurement section for the Item), either party to the contract may request, in writing, an adjustment of the quantities by each separate Contract item, except that when stated in the particular item, the adjustment will be made based upon a designated element shown in the Item. The party to the Contract which requests the adjustment must present, to the other, one copy of field measurements and calculations showing the revised quantities in question. These revised quantities, when approved by the Engineer, together with all other quantities under the same Contract item, constitute the final quantity for which payment will be made.

When quantities are revised by a change in design, the "Plan Quantity" will be increased or decreased by the amount involved in the design change.

Payment for revised quantities will be paid for at the Contract unit price, except as provided for in Paragraph 4.14, "Increases and Decreases in Quantity of Work."

9.8 Disbursements to Persons with Outstanding Debts Prohibited

In accordance with Section 154.045 of the Local Government Code, the County hereby notifies the Contractor that if a notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of the 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 the Contractor, until: (1) the County Treasurer notifies the Contractor in writing that the debt is outstanding; and (2) the debt is paid.

"Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the County.

The County may apply any funds the County owes the Contractor to the outstanding balance of any debt for which notice has been made under Paragraph 9.8 if the notice includes a statement that the amount owed by the County to the Contractor may be applied to reduce the outstanding debt.

9.9 Interest on Overdue Payments

Accrual and payment of interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.

9.10 Contractor Must Promptly Pay Subcontractors

The Contractor must promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount of which said Subcontractor is entitled, reflecting the percentage actually retained, from payments to the Contractor on account of such Subcontractor's Work. The Contractor must, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner. All payments to Subcontractors and Sub-subcontractors must be made within 10 days of receipt of payment for Work claimed in an Application for Payment that the Subcontractor or Sub-subcontractor performed. Such Application for Payments must designate the dollar amount of Work which Subcontractor or Sub-subcontractor provided to allow for the Owner's tracking of Historically Underutilized Business (HUB) requirements.

The Owner may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentage of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

The Owner has no obligations to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

None of the following constitutes an acceptance by the County of any Work not done in accordance with the Contract Documents: approval of Application for Payment, a Progress Payment, any partial or entire use or occupancy of the Project by the Owner.

9.11 Applicable Regulations.

Payment under the Contract is subject to the cost provisions and cost principles set forth in 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 Title 24 C.F.R. Section 85.22 or Title 2 C.F.R. Part 225 (including Appendices A and B thereto) and the Prompt Payment Act, applicable provisions of Section 85.22 or 2 C.F.R. Part 225, as the case may be, will control.

ITEM 10**MAINTENANCE OF AND RIGHT OF ACCESS TO RECORDS**

- 10.1 The Contractor must maintain all books, documents, papers, accounting records, other records and other evidence directly pertaining to services provided under this Agreement, including the Exhibits and Attachments hereto, and costs and expenses of such services. With respect to accounting records, the Contractor must maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, including source documentation such as cancelled checks, paid bills, payrolls, time and attendance records if applicable, Contract award documents, and other documentation as required by County. Contractor must give, and must require all Subcontractors to give, County, HUD, the Comptroller General of the United States, other authorized Federal officials, and any of their duly authorized representatives access to and the right to examine, free of charge, all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Contractor pertaining to this agreement at reasonable times and for reasonable periods. These rights to access will continue as long as the records are required to be retained by Contractor, and for any additional time period that the records are retained by Contractor. These rights include accessibility for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.
- 10.2 The Contractor must maintain the records described in Paragraph 10.1 above during this Contract period and for 4 years from the date of completion of work defined under this Contract, including the Exhibits and Attachments hereto, or until any impending litigation has been completely and fully resolved, or until all pending matters relating to this Contract, including the Exhibits and Attachments hereto, are closed, whichever occurs last.

ITEM 11**TAXPAYER IDENTIFICATION**

- 11.1 The Contractor must provide the County with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations and a statement of entity status in a form satisfactory to the County Auditor.

ITEM 12**DUNS NUMBER REGISTRATION**

- 12.1 The County is a recipient of CDBG Program funds for the Project.

- 12.2 The Contractor must provide the County with a Data Universal Numbering System (DUNS) number, which must be provided in a document from Dun and Bradstreet.
- 12.3 The Contractor must maintain a current DUNS number for the duration of this Agreement.
- 12.4 The Contractor acknowledges that it has read Attachment 12 (CDBG Program Information to Assist with DUNS Number Registration Regarding Registration).
- 12.5 The Contractor certifies that it has registered with the Data Universal Numbering System operated by Dun and Bradstreet and has obtained a DUNS number and that its DUNS Number listed on the Signature Page of the Agreement is true and correct. In addition, the Contractor must provide the certification in Attachment 12 and require each of its subcontractors to provide the certification in Attachment 12.
- 12.6 By signing this Contract, the Contractor certifies that it will not use any subcontractor that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. The Contractor agrees that prior to entering into any agreement with a potential subcontractor, the Contractor will:
 - 12.6.1 check the System for Award Management (SAM) at www.sam.gov to verify that the subcontractor is not debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549;
 - 12.6.2 include a copy of the verification results in its project files; and
 - 12.6.3 provide a copy of the verification results to the County.
- 12.7 All information provided by the Contractor and any of its subcontractors pursuant to this Agreement is available to the public for viewing and/or copying and may be posted on the following websites: www.co.travis.tx.us, and www.sam.gov.

ITEM 13

CERTIFICATION OF ELIGIBILITY TO RECEIVE FEDERAL FUNDS/DEBARMENT CERTIFICATIONS

- 13.1 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:
 - 13.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
 - 13.1.2 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;

- 13.1.3 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 13.1.2; and
- 13.1.4 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.
- 13.2 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.
- 13.3 [Intentionally deleted.]
- 13.4 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.
- 13.5 The Contractor must provide to the County the certification in **Attachment 13** (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts) in accordance with 24 C.F.R. Part 24 (Debarment and Suspension).

**ITEM 14
CONTRACTOR ELIGIBILITY VERIFICATION**

- 14.1 The Contractor must not perform any work, allow a subcontractor to perform any work, or enter into any contractual agreement with a subcontractor until (1) the Contractor and any of its potential subcontractors have completed the information in the Contractor Eligibility Verification Form which is attached hereto as **Attachment 14**, and (2) the Travis County Purchasing Office provides written notice to the Contractor and the subcontractor they have been cleared to perform the work.

**ITEM 15
COMPLIANCE WITH "SECTION 3"**

- 15.1 **COMPLIANCE.** Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders issued hereunder prior to the execution of this Contract, is a condition of the Federal financial assistance provided under this Contract and binding upon the County, the Contractor and any of the Contractor's Subcontractor(s). Failure to fulfill these requirements will subject County, Contractor and Subcontractor(s), the successors and assigns, to those sanctions specified by the Contract through which Federal assistance is provided. Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
- 15.2 The Contractor acknowledges that it has read **Attachment 15** and understands its "Section 3" obligations.

- 15.3 The Contractor must certify its compliance with Section 3 by executing the Section 3 Certification set forth in Exhibit 6 of **Attachment 15**.

ITEM 16
AUTOMATIC INCLUSION OF FUTURE HUD REGULATIONS

- 15.1 ANY OTHER DEFINED TERMS THAT ARE ADOPTED OR UTILIZED BY HUD IN ANY FUTURE HUD REGULATION OR OFFICIAL NOTICE ISSUED IN CONNECTION WITH THE OPERATION AND ADMINISTRATION OF THE CDBG PROGRAM SHALL BE AUTOMATICALLY INCLUDED AS A DEFINED TERM UNDER THIS AGREEMENT.

ITEM 17
LOBBYING CERTIFICATION

- 16.1 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:

16.1.1 the awarding of any federal grant;

16.1.2 the making of any federal grant;

16.1.3 the making of any federal loan;

16.1.4 the entering into of any cooperative agreement; and

16.1.5 the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

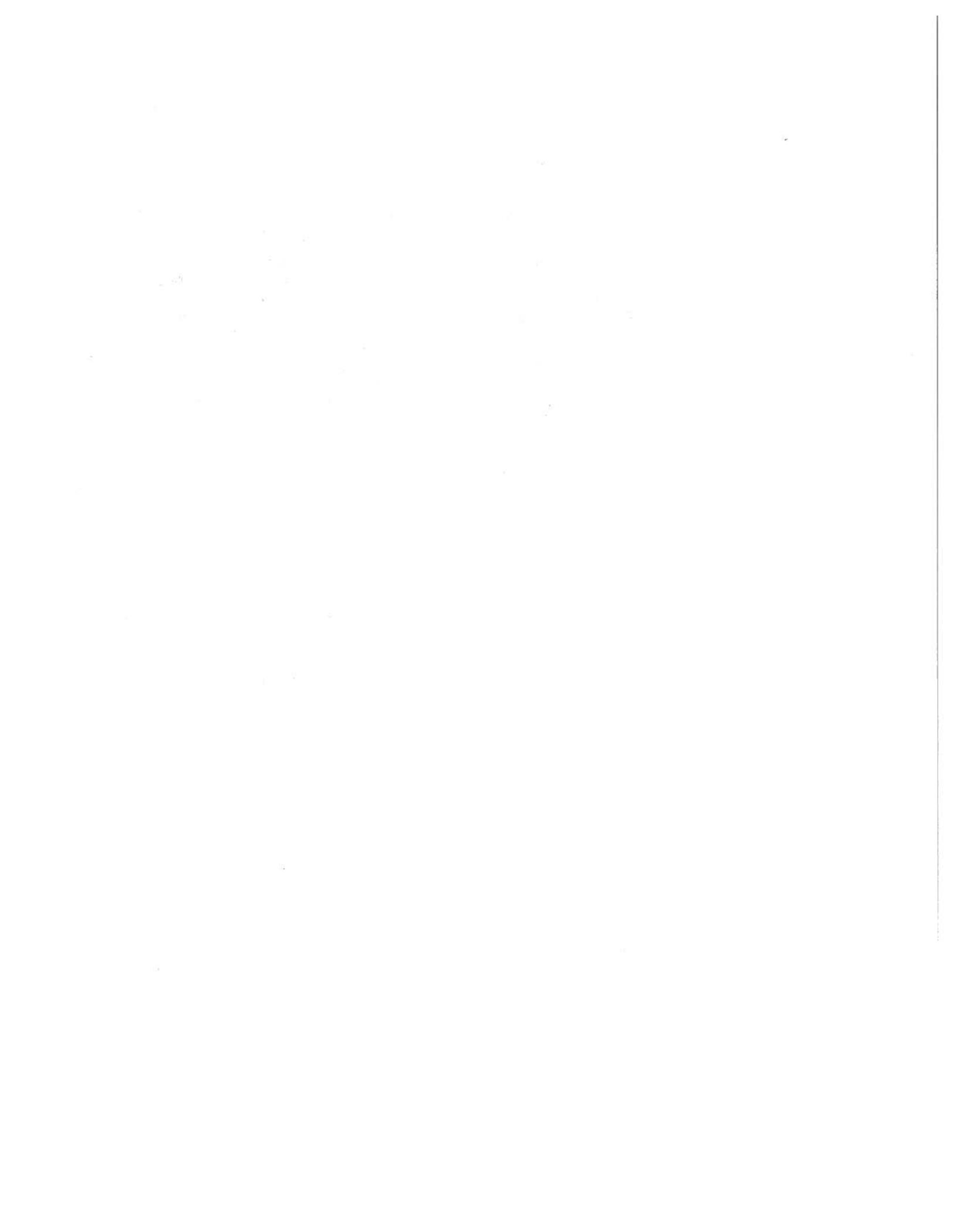
- 16.2 In executing this Agreement, the signatories certify to the best of his or her knowledge and belief that:

16.2.1 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.

- 16.3 The Contractor must include the above language in all contracts and subcontracts between the Contractor and its contractors, subcontractors, subconsultants, agents, or representatives.

- 16.4 The Contractor or its contractors, subcontractors, 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.

- 16.5 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.
- 16.6 The Contractors and its consultants, subcontractors and subconsultants, as applicable, must 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 16 hereto. In accordance with 24 C.F.R. Section 87.110(c), the Contractor and its consultants, subcontractors, 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.



II. CONTRACT REQUIREMENTS

A. INSTRUCTIONS TO CONTRACTOR

Affidavit of Noncollusion and Other Matters

Contractor must file a statement executed by or on behalf of the person, firm, association, or corporation executing the Contract certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the executed Contract. Failure to submit the executed statement as part of the Contract documents may result in non-award of the contract.

The undersigned Contractor declares that the only person or parties interested in this Contract as Principals are those named herein; that this Contract is made without collusion with any other person, firm, corporation, or association; that Contractor has carefully examined the Form of the Contract, Instructions to Contractor, Profiles, Grades, Specifications, and Plans therein referred to, and this Contract is made in accordance therewith, taking into consideration locations, conditions and classes of materials of the proposed work; and agree(s) that they will provide all the necessary machinery, labor, tools, apparatus and other means of construction, and will do all the work and furnish all the materials called for in the Contract and Specifications in the manner prescribed therein and according to the requirements of the County Executive for the Travis County Transportation and Natural Resources Department (TNR) as therein set forth.

Quantities

It is understood that the following quantities of work to be done are approximate only.

It is further agreed that the quantities of work to be done and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the County Executive of TNR to complete the work, fully as planned and contemplated, and that all quantities of work, whether increased or decreased, are to be performed at the unit prices set forth below, except as provided for in the Specifications.

The undersigned agree(s) and pledge(s) themselves to complete the work in full within 60 calendar days after receiving a written "Notice to Proceed" approved by the County Executive and the County Purchasing Agent.

Bonds.

If the Contract is for an amount which Texas Government Code Sections 2253.001 et seq. or 49 C.F.R. Part 18 authorizes bonding, a Performance Bond and Payment Bond are to be given by the undersigned within 7 calendar days of written notification of award in the full amount of the Contract to secure proper compliance with the terms and provisions of this Contract, and to insure and guarantee the work until final completion and acceptance. The bonds will be attached to the executed Contract and become a part thereof. All premiums for such bonds will be paid by the Contractor.

Contractor understands that in the event that a Performance Bond (for contracts under \$100,000 total) and Payment Bond (for contracts under \$25,000 total) are not required, then payment on the Contract will be made upon acceptance by the County of satisfactory work by the Contractor. Even if Performance and Payment Bonds are not required, a Contract must be executed in the manner described herein.

Acceptance.

The work proposed to be done will be accepted when fully completed and finished to the entire satisfaction of the TNR County Executive.

Attachments.

As part of the Contract, attached are:

- (1) a certification of compliance with Davis-Bacon standards (Attachment 1-D),
- (2) an affidavit and acknowledgment regarding Travis County ethics requirements (Attachment 3),
- (3) a completed, certified, and notarized safety record questionnaire (Attachment 4),
- (4) a stormwater pollution prevention compliance agreement (Attachment 5),
- (5) an environmental compliance and safety record questionnaire (Attachment 6),
- (6) HUB Subcontracting Participation Form (Exhibit A to Attachment 7),
- (7) HUB Good Faith Effort Determination Checklist (Exhibit B to Attachment 7),
- (8) a certificate of secretary (if Contractor is a corporation) (Attachment 10),
- (9) an affidavit regarding non-collusion, (Attachment 11),
- (10) DUNS Certification (Attachment 12)
- (11) a certification regarding debarment, suspension, ineligibility, and voluntary exclusion (Attachment 13),
- (12) Contractor Eligibility Verification Form (Attachment 14),
- (13) a certification regarding compliance with "Section 3" (Attachment 15), and
- (14) a disclosure regarding lobbying activities, (Attachment 16).

Disputes and Appeals.

The Purchasing Agent acts as the County representative in the issuance and administration of this Contract. Any document, notice, or correspondence not issued by or to the Purchasing Agent is void unless otherwise stated in this Contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, the Contractor must submit a

B. Proposal

written notice to the Purchasing Agent within 10 calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a Notice of Appeal to the Commissioners Court, through the Purchasing Agent, if the Notice is submitted within 10 calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court. This paragraph does not apply to labor disputes, including disputes arising under the labor provisions set forth herein, which are subject to 29 C.F.R. Parts 5, 6, and 7.

Disputes

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality. This paragraph does not apply to labor disputes, including disputes arising under the labor provisions set forth herein. Title 29 C.F.R. Parts 5, 6, and 7 apply to labor disputes between the Contractor and any of its subcontractors, the Contractor and its employees or their representatives, the Contractor and the County, and the Contractor and the Department of Labor.

CONFLICT OF INTEREST QUESTIONNAIRE

If required under Chapter 176 of the Texas Local Government Code, Contractor must file a completed Conflict of Interest Questionnaire in accordance with the requirements of that Chapter. Within the applicable, authorized time period prescribed in Chapter 176, Contractor must file the completed Conflict of Interest Questionnaire with the Travis County Clerk, Recording Division, 5501 Airport Blvd., Austin, Texas 78751. Contractor must file an updated, completed questionnaire with the Travis County Clerk not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. The Contractor should note that the law requires that the County provide access to a filed Questionnaire on the official Travis County Internet website. However, the law does not require that the County release information which is excepted from disclosure under the Texas Public Information Act. As between County and Contractor, Contractor is solely responsible for the preparation of its Conflict of Interest Questionnaire, the accuracy and completeness of the content contained therein and ensuring compliance with all applicable requirements of Chapter 176, Local Government Code.

BARKLEY MEADOWS PARK FLOOD REPAIR PROJECT

SS stands for Special Specification and are included in the project manual.

Unit Abbreviations: CY = Cubic Yard, LF = Linear Foot, VF = Vertical Foot, STA = Stations, AC = Acre, EA = Each, SY = Square Yards, LS = Lump Sum, SF = Square Feet, EA = Each, FF = Face Foot

BASE CONTRACT

Bid Item	Spec. Item No.	Description	Unit	QTY	Unit Price	Amount
2	102S	Cleaning and Grubbing	AC	2.00	\$6,000.00	\$12,000.00
9	604S	Revegetation, including topsoil and native seed mix	LS	0.70	\$100,000.00	\$70,000.00
21	SS-01	Conlock Slope Stabilization-Set Unit	SF	3,000.00	\$15.00	\$45,000.00
53	N/A	Fencing at SH 130	LF	1,200.00	\$12.00	\$14,400.00
72	SS-02	X-Grass 50oz Superlawn MS Pro Fall surface with Envirofil, 1" and 2" depth Sofpads and all associated drainage complete in place	SF	4,570.00	\$16.50	\$75,405.00
CO1-1	TXDOT 111,132	Embankment/Excavation	LS	13.50	\$9,000.00	\$121,500.00
New-1	TXDOT 432	Concrete Rip Rap	CY	20.00	\$850.00	\$17,000.00
New-2	TXDOT 432	Rock Rip Rap	TON	2,000.00	\$74.00	\$148,000.00
New-3	TXDOT 100	Disposal	LS	1.00	\$3,000.00	\$3,000.00
New-4	TXDOT 500	Mobilization	LS	1.00	\$12,000.00	\$12,000.00
					Base Bid Total	\$518,305.00

Below please type the base Contract amount in words below.

Tax-Exempt Total	\$160,000.00	Non-Tax-Exempt Total	\$358,305.00
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Tax-exempt costs are the total cost of materials incorporated into the project or completely consumed at the job site and services required by or integral to the performance of the Contract.	Non-Tax-exempt costs are all other charges, including the cost of labor, overhead, and materials which do not become part of the project or are not completely consumed at the job site.
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NOTE: The sum of the tax-exempt and non-tax-exempt costs must equal the Total Base Contract Amount.

Note: The Travis County Commissioners Court reserves the right to reject Contractor's proposal at its sole discretion.

BASE CONTRACT SUM

Contractor is (check one of the following and insert information requested),

- A. A corporation organized and existing under the laws of the State of Tx; or
- B. A partnership organized and existing under the laws of the State of _____; or
- C. An individual doing business under an assumed name registered under the laws of the State of _____:

Has complied with Instructions to Contractor, examined the Contract Documents dated March 14, 2014 is familiar with all the conditions relating to the proposed project, and has received Addenda Numbers ___ through ___, and has included their provisions in the Proposal upon these premises.

ATTACHMENTS

The undersigned has attached the following, which are a condition of the Contract award:

1. Attachment 1-D: Certification of compliance with Davis-Bacon standards
2. Attachment 3: Ethics Affidavit-Statement of Compliance with the Travis County Ethics Policy (including: Exhibit A: List of Key Contracting Persons and Exhibit B: Contractor Acknowledgement)
3. Attachment 4: Safety Record Questionnaire
4. Attachment 5: Stormwater Pollution Prevention Plan Compliance Agreement
5. Attachment 6: Environmental Compliance and Safety Record Questionnaire
6. Exhibit A to Attachment 7: HUB Subcontracting Participating Form
7. Exhibit B to Attachment 7: HUB Good Faith Effort Determination Checklist
8. Attachment 10: Certificate of Secretary (if Contractor is a corporation)
9. Attachment 11: Non-Collusion Affidavit
10. Attachment 12: DUNS Number Registration
11. Attachment 13: a certification regarding debarment, suspension, ineligibility, and voluntary exclusion
12. Attachment 14: Contractor Eligibility Verification Form
13. Attachment 15: Certification regarding compliance with "Section 3," and
14. Attachment 16: Disclosure of Lobbying Activities.

SIGNATURES

A. IF CONTRACTOR IS AN INDIVIDUAL:

By: _____
(Signature of individual authorized to sign) (Printed name of individual)

Doing Business as: _____

Business Address _____

Telephone No: _____

Submitted on: _____, 20__

B. IF CONTRACTOR IS A PARTNERSHIP:

By: _____
(Signature of person(s) authorized to sign) (Printed name of person(s))

(General partner) _____

(General partner) _____

(General partner) _____

Business Address _____

Telephone No: _____

Submitted on: _____, 20__

C. IF CONTRACTOR IS A CORPORATION:

By: Smith Contracting Co Inc
(Corporation name)

Texas
(State of incorporation)

By: [Signature] Travis Ragland
(Signature of person authorized to sign) (Printed name of person authorized to sign)

Vice President
(title)

Corporate seal

Attest:

(Secretary)

Business Address 15308 Ginger St Austin, Tx 78728

Telephone No: 512-990-7641

Submitted on: _____, 20__

C. CONTRACT BOILERPLATE

STATE OF TEXAS §

COUNTY OF TRAVIS §

CONTRACT FOR CONSTRUCTION PROJECT BARKLEY MEADOWS PARK FLOOD REPAIR PROJECT BETWEEN TRAVIS COUNTY AND SMITH CONTRACTING CO.

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 **SMITH CONTRACTING CO.**, (hereinafter referred to as the "Contractor") and is binding upon their respective executors, administrators, heirs, successors, and assigns.

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.C.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 **Barkley Meadows Park Flood Repair Project** in Travis County, Texas, in accordance with the provisions of state and federal regulations and conforming to the Contractor's Notice of Construction, Contractor's Proposal, Specifications and Plans marked **Barkley Meadows Park Flood Repair Project (CONTRACT NO. 4400001942)**, 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 **(CONTRACT NO. 4400001942)**.

NOW THEREFORE, in consideration of the County's promise to pay the amount below as totaled in the Contractor's 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 **Barkley Meadows Park Flood Repair Project** in Travis County, Texas, in accordance with the provisions of the aforementioned Contractors' Notice of Construction, the Contract as awarded by the Commissioners Court, and the Specifications and Plans marked **(CONTRACT NO. 4400001942)**, 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 Contractor's Proposal, and the Specifications and Plans marked (CONTRACT NO. 4400001942) including all Exhibits and 16 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 calendar 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 \$518,305.00, consisting of \$160,000.00 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 \$358,305.00 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., CPPO (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:

Name of Company:

Address:

Contact:

Title:

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 Contract execution or had done business during the 365-day period immediately prior to the date of Contract execution with one or more Key Contracting Persons listed in Exhibit A to the Ethics Affidavit which is attached to CONTRACT No. 4400001942 incorporated by reference therein as Exhibit A (both contained in Attachment 3 thereto); or

8.1.2 Contractor does business with a Key Contracting Person after the date of Contract execution 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 \$250 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 CONTRACT No. 44000041942.

 - 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 contract No. 4400001942, 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 7 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 7 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 Contract No. 4400001942
- 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 SMITH CONTRACTING CO. 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 Contract execution and time of Contract award, the Contractor 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 12 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts)** in accordance with 24 C.F.R. Part 24 (Debarment and Suspension).
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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 1-C 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 1-C 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 15 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 Contract No. 4400001942, 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. 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.

C. 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.

D. 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 CONTRACT No. 4400001942.

E. 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.

F. NON-WAIVER OF DEFAULT. Consistent with CONTRACT No. 4400001942, 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 CONTRACT No. 4400001492. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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 Contract. Identification of this relationship should be accomplished through completion of the "Notice of Intent to Subcontract with HUB Form," attached in CONTRACT No. 4400001942 as part of Attachment 7. 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 CONTRACT No. 4400001942 as part of Attachment 7. 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 CONTRACT No. 4400001942 as part of Attachment 7, 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.

L. 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.

M. 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,

Contract No. 4400001942

I. Contract
C. Contract Boilerplate

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

Smith Contracting Co Inc
CONTRACTOR NAME

BY: **DRAFT**
TRAVIS COUNTY JUDGE

BY: [Signature]

APPROVED AS TO FORM:

APPROVED: _____

TRAVIS COUNTY ATTORNEY

COUNTY PURCHASING AGENT

CERTIFIED FUNDS ARE AVAILABLE

COUNTY AUDITOR, TRAVIS COUNTY

D. ATTACHMENTS

ATTACHMENT 2

SALES TAX PERMITS

The Contractor's attention is directed to Paragraph No. 3 of Ruling No. 9, Repairmen and Contractors (Amended April 3, 1962), issued by the Comptroller of Public Accounts. Reference: Section 151.309 of the Tax Code.

The Contractor must comply with Paragraph No. 3 of Ruling No. 9 by obtaining the necessary permit or permits from the State Comptroller allowing the purchase of certain materials and services without having to pay the Limited Sales, Excise and Use Tax at the time of purchase. The Contractor must submit segregated prices for: (1) the total cost of materials incorporated into the Project or completely consumed at the jobsite and services which are required by or integral to the performance of the Contract and (2) all other charges, including the cost of labor, overhead, and materials which do not become part of the finished project or are not completely consumed at the jobsite. Proposal prices are not to include sales tax on materials incorporated into the Project or completely consumed at the jobsite and services required by or integral to the performance of the Contract. The Engineer will furnish the Contractor with an exemption certificate a copy of which is attached hereto for the purchase of the exempt materials and services.

This statement must be on the prescribed form and must be submitted by the Contractor with the executed Contract. This statement will be a part of the Contract.

ATTACHMENT 2

TEXAS SALES TAX AND LOCAL SALES TAX EXEMPTION CERTIFICATE FOR CONTRACTORS

THIS CONTRACT IS TO BE PERFORMED FOR TRAVIS COUNTY, TEXAS, AN EXEMPT ORGANIZATION AS DEFINED BY CHAPTER 11 OF THE TEXAS PROPERTY TAX CODE, AND THE UNDERSIGNED HEREBY CLAIMS AN EXEMPTION FROM PAYMENT OF SALES TAXES UNDER CHAPTER 151 OF THE TEXAS TAX CODE ENTITLED "THE LIMITED SALES, EXCISE, AND USE TAX ACT," AND CHAPTER 321 OF THE TEXAS TAX CODE, ENTITLED "MUNICIPAL SALES AND USE TAX ACT," AND ALL APPLICABLE MUNICIPAL CODES AND ORDINANCES.

THE CONTRACTOR PERFORMING THE CONTRACT MAY PURCHASE ALL MATERIALS INCORPORATED INTO REALTY OR COMPLETELY CONSUMED AT THE JOBSITE AND SERVICES REQUIRED BY OR INTEGRAL TO THE PERFORMANCE OF THE CONTRACT IN THE PERFORMANCE OF THIS CONTRACT WITHOUT PAYING SALES TAX BY ISSUING TO HIS RETAILER A RESALE CERTIFICATE AND COPY OF THIS CERTIFICATE IN LIEU OF THE TAX IN ACCORDANCE WITH SECTION 3.291 OF TITLE 34 OF THE TEXAS ADMINISTRATIVE CODE.

THE CONTRACTOR WILL BE LIABLE FOR PAYMENT OF THE LIMITED SALES AND USE TAX FOR ALL OTHER CHARGES IF THE CONTRACTOR USES THE TANGIBLE PERSONAL PROPERTY OR SERVICES IN SOME OTHER MANNER OR FOR SOME OTHER USE THAN THE REASON LISTED ABOVE, AND MUST PAY THE TAX BASED ON THE PRICE PAID FOR THE TANGIBLE PERSONAL PROPERTY OR SERVICES.

Smith Contracting Co Inc.

CONTRACTOR

DESCRIPTION OF MATERIALS TO BE INCORPORATED INTO REALTY OR COMPLETELY CONSUMED AT THE JOBSITE AND SERVICES REQUIRED BY OR INTEGRAL TO THE PERFORMANCE OF THE CONTRACT:

X-grass, Conlock, fencing, riprap, concrete

EXECUTED THIS THE 8 DAY OF April, YEAR 2014.

TRAVIS COUNTY, TEXAS

4400001942
CONTRACT NUMBER

BY: 
TITLE: Vice President

ATTACHMENT 3
ETHICS POLICY

The following form (Attachment 3) must be completed and submitted by the Contractor or his designated representative.

1. DEFINITIONS:

1.1 "Is doing business" and "has done business" mean:

- 1.1.1 paying or receiving, in any calendar year, any money or valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for the purchase of any property or property interest, either real or personal, either legal or equitable; or,
- 1.1.2 loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
- 1.1.3 **but does not include**
- 1.1.4 any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the public,
- 1.1.5 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; and
- 1.1.6 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.

1.2 "Key Contracting Person" means any person or business listed in the Exhibit to the Affidavit attached to this Contract and marked Exhibit A.

2. FORFEITURE OF CONTRACT:

2.1 Contractor will forfeit all benefits of the Contract and County will retain all performance by Contractor and recover all consideration or the value of all consideration paid to Contractor pursuant to the contract if:

2.1.1 Contractor was doing business at the time of submitting its proposal or had done business during the 365 day period immediately prior to the date on which its proposal was submitted with one or more Key Contracting Persons if Contractor has not disclosed the name of the Key Contracting Person in Exhibit B, Disclosure Statement which is expressly incorporated into this Contract, or

2.1.2 Contractor does business with any Key Contracting Person after the date on which the Contract is executed and prior to full performance of the Contract and fails to disclose the name of that Key Contracting Person in writing to each member of the Commissioners Court and to the County Clerk within 10 days after commencing business with that Key Contracting Person.

STATE OF TEXAS §
COUNTY OF TRAVIS §

ETHICS AFFIDAVIT

Date
: 4/8/2014

Name of Affiant: Travis Ragland

Title of Affiant: Vice President

Business Name of Contractor: Smith Contracting Co Inc

County of Contractor: Travis

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Contractor to make this affidavit for Contractor.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. Contractor has received the list of key contracting persons associated with this contract which is attached to this affidavit as Exhibit A.
5. Affiant has personally read Exhibit A to this Affidavit.
6. Affiant has no knowledge of any key contracting person on Exhibit A with whom Contractor is doing business or has done business during the 365-day period immediately before the date of this affidavit whose name is not disclosed in Exhibit B of this affidavit.

[Signature]
Signature of Affiant

15308 Ginger St Austin, Tx 78728
Address

SUBSCRIBED AND SWORN TO before me by Travis Ragland on April 8, 2014.

Mary Roxanne Jasek
Notary Public, State of Texas

Mary Roxanne Jasek
Typed or printed name of notary

My commission expires: January 29, 2017



EXHIBIT A
LIST OF KEY CONTRACTING PERSONS
March 14, 2014

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
County Judge ...	Samuel T. Biscoe	
County Judge (Spouse)	Donalyn Thompson-Biscoe....	
Executive Assistant	Cheryl Brown	
Executive Assistant	Melissa Velásquez	
Executive Assistant	Josie Z. Zavala	
Executive Assistant	David Salazar	
Commissioner, Precinct 1	Ron Davis	
Commissioner, Precinct 1 (Spouse).....	Annie Davis	Seton Hospital
Executive Assistant	Deone Wilhite	
Executive Assistant	Felicitas Chavez	
Executive Assistant	Sue Spears	
Commissioner, Precinct 2	Bruce Todd*	
Commissioner, Precinct 2 (Spouse)	Elizabeth Christian	Consultant
Executive Assistant	Sara Krause*	
Executive Assistant	Joe Hon	
Executive Assistant	Peter Einhorn	
Commissioner, Precinct 3	Gerald Daugherty*	
Commissioner, Precinct 3 (Spouse)	CharylN Daugherty	Consultant
Executive Assistant	Bob Moore*	
Executive Assistant	Martin Zamzow*	
Executive Assistant	Madison A. Gessner*	
Commissioner, Precinct 4	Margaret Gomez	
Executive Assistant	Edith Moreida	
Executive Assistant	Norma Guerra	
County Treasurer	Dolores Ortega-Carter	
County Auditor	Nicki Riley	
County Executive, Administrative.....	Vacant	
County Executive, Planning & Budget ...	Leslie Browder	
County Executive, Emergency Services .	Danny Hobby	
County Executive, Health/Human Services	Sherri E. Fleming	
County Executive, TNR	Steven M. Manilla, P.E.	
County Executive, Justice and Public Safety	Roger Jefferies	
Chief Information Officer	Tanya Acevedo	
Director, Facilities Management.	Roger El Khoury, M.S., P.E.	
Director, Records Mgmt & Communications	Steven Broberg	
Travis County Attorney	David Escamilla	
First Assistant County Attorney	Steve Capelle	
Executive Assistant, County Attorney	James Collins	
Director, Land Use Division.....	Tom Nuckols*	
Attorney, Land Use Division.....	Christopher Gilmore	
Attorney, Land Use Division.....	Julie Joe	
Director, Transactions Division	John Hille	
Attorney, Transactions Division..	Daniel Bradford*	
Attorney, Transactions Division..	Elizabeth Winn*	
Attorney, Transactions Division..	Mary Etta Gerhardt	
Attorney, Transactions Division..	Barbara Wilson	
Attorney, Transactions Division..	Jim Connolly	
Attorney, Transactions Division..	Tenley Aldredge	
Director, Health Services Division	Beth Devery	
Health Services Division	Prema Gregerson	

CURRENT - continued

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
Purchasing Agent	Cyd Grimes, C.P.M., CPPO	
Assistant Purchasing Agent	Marvin Brice, CPPB	
Assistant Purchasing Agent	Bonnie Floyd, CPPO, CPPB, CTPM	
Purchasing Agent Assistant IV... ..	C.W. Bruner, CTP	
Purchasing Agent Assistant IV... ..	Lee Perry	
Purchasing Agent Assistant IV... ..	Jason Walker	
Purchasing Agent Assistant IV... ..	Richard Villareal	
Purchasing Agent Assistant IV... ..	Patrick Strittmatter	
Purchasing Agent Assistant IV... ..	Lori Clyde, CPPO, CPPB	
Purchasing Agent Assistant IV... ..	Scott Wilson, CPPB	
Purchasing Agent Assistant IV... ..	Jorge Talavera, CPPO, CPPB	
Purchasing Agent Assistant IV... ..	Loren Breland, CPPB	
Purchasing Agent Assistant IV... ..	John E. Pena, CTPM	
Purchasing Agent Assistant IV... ..	Rosalinda Garcia	
Purchasing Agent Assistant IV... ..	Angel Gomez	
Purchasing Agent Assistant IV... ..	Jesse Herrera, CTP, CTPM, CTCM	
Purchasing Agent Assistant III	Shannon Pleasant, CTPM	
Purchasing Agent Assistant III	Michael Long, CPPB	
Purchasing Agent Assistant III	David Walch	
Purchasing Agent Assistant III	Sydney Ceder	
Purchasing Agent Assistant III	Ruena Victorino*	
Purchasing Agent Assistant III	Rachel Fishback*	
Purchasing Agent Assistant III	Vacant	
Purchasing Agent Assistant II	L. Wade Laursen	
Purchasing Agent Assistant II	Sam Francis	
HUB Coordinator	Sylvia Lopez	
HUB Specialist	Betty Chapa	
HUB Specialist	Jerome Guerrero	
Purchasing Business Analyst.....	Scott Worthington	
Purchasing Business Analyst.....	Vacant	
TNR	Miguel Villarreal, P.E.	
HHS-CDBG	Christy Moffett	

FORMER EMPLOYEES

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
Commissioner, Precinct 2	Sarah Eckhardt	05/31/14
Purchasing Agent Assistant III	Nancy Barchus, CPPB.. ..	06/28/14
Purchasing Business Analyst.....	Jennifer Francis	11/29/14
Executive Assistant	Barbara Smith..	01/15/15

* - Identifies employees who have been in that position less than a year.

EXHIBIT B

Contractor acknowledges that Contractor is doing business or has done business during the 365 day period immediately prior to the date on which this contract is made/entered with the following key persons and warrants that these are the only such Key Contracting Persons:

Travis Ragland - Vice President
Justin Dorsett - Super
Roxanne Jasek - AIR

If no one is listed above, Contractor warrants that Contractor is not doing business and has not done business during the 365 day period immediately prior to the date on which this contract is made/entered with any Key Contracting Person.

ATTACHMENT 4

SAFETY RECORD QUESTIONNAIRE

(must be submitted with proposal)

The Travis County Commissioners Court desires to avail itself of the benefits of Section 262.0275 of the Local Government Code, and thereby consider the safety records of potential contractors prior to awarding County contracts. Pursuant to Section 262.0275 of the Local Government Code, Travis County has adopted the following written definition and criteria for accurately determining the safety record of Contractor prior to awarding the contract.

The definition and criteria for determining the safety record of Contractor for this consideration are:

If the Contractor in response to the questions in this Questionnaire reveals more than 2 cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Contractor for serious violations of OSHA regulations within the past 3 years, County will, at its discretion, determine whether to disqualify the Contractor.

If the Contractor in response to the questions in this Questionnaire reveals more than one (1) case in which Contractor has received a citation from an environmental protection agency for violations within the past 5 years, County will, at its discretion, determine whether to disqualify the Contractor. Environmental Protection Agencies include the U.S. Army Corps of Engineer (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ) and its predecessor agency, the Texas Natural Resource Conservation Commission (TNRCC), the Texas Department of State Health Services and its predecessor agency, the Texas Department of Health, and the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspensions/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, convictions, deferred adjudications, administrative orders, draft orders, final orders, judicial final judgments. Notices of Violations and Notices of Enforcement received from TCEQ includes those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History, 30 TEX. ADMIN. CODE sec. 60.2 (c)(1) and (2).

If the Contractor in response to the questions in this Questionnaire reveals that the Contractor has been convicted of or received deferred adjudication for a criminal offense within the past 10 years which resulted in serious bodily harm or death, County will determine whether to disqualify the Contractor.

In order to obtain proper information from Contractor so that Travis County may consider the safety records of contractor prior to awarding the contract, Travis County requires that Contractor answer the following 3 questions and submit them with its proposal:

QUESTION ONE

Has the Contractor, or the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such firm, corporation, partnership, or institution, received citations for violations of OSHA within the past 3 years?

YES _____ NO

If the Contractor has indicated YES for question number one above, the Contractor must provide to Travis County, with its proposal, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

QUESTION TWO

Has the Contractor, or the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such firm, corporation, partnership, or institution, received citations for violations of environmental protection laws or regulations within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed pending criminal complaints, indictments, deferred adjudications, convictions, administrative orders, draft orders, final orders, and final judgments. Notices of Violations and Notices of Enforcement received from TCEQ must include those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History, 30 TEX. ADMIN. CODE sec. 60.2 (c)(1) and (2).

YES _____ NO

If the Contractor has indicated YES for question number two above, the Contractor must provide to Travis County, with its proposal, the following information with respect to each such citation:

Date of offense, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

QUESTION THREE

Has the Contractor, or the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted or received deferred adjudication, within the past 10 years, for a criminal offense which resulted in serious bodily injury or death?

YES _____ NO

If the Contractor has indicated YES for question number three above, the Contractor must provide to Travis County, with its proposal, the following information with respect to each such conviction or deferred adjudication:

Contract No. 4400001942

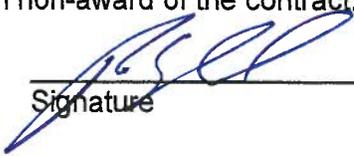
II. Contract Requirements
D. Attachments

Date of offense, location where offense occurred, type of offense, final disposition of offense, in any, and penalty assessed.

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

I certify that I have made no willful misrepresentations in this Questionnaire and that I have not withheld any information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may result in non-award of the contract.



Signature

Vice President
Title

ATTACHMENT 5

**STORMWATER POLLUTION PREVENTION PLAN COMPLIANCE AGREEMENT AND CERTIFICATION
FOR THE DURATION OF THE CONTRACT FOR BARKLEY MEADOWS PARK FLOOD REPAIR PROJECT
TRAVIS COUNTY, IN PRECINCT 4
Contract NO. 4400001942**

The Bidder/Contractor, as the Primary Construction Site Operator having day-to-day operational control of the activities at the construction site necessary to ensure compliance with the Storm Water Pollution Prevention Plan ("SWP3"), is responsible for implementing the SWP3 included in the construction plans for this Project to prevent water pollution from storm water and pollutant discharges. The Bidder/Contractor and any Secondary Operators, such as subcontractors, have reviewed the SWP3 and agree to implement and maintain all control measures and practices required therein in accordance with the approved plans, specifications, and terms of this contract. The Bidder/Contractor must employ sufficient personnel with the necessary training, experience, and qualifications to install, inspect, and maintain the controls and measures as required in the SWP3. The Bidder/Contractor must post and maintain the Construction Site Notice ("CSN") provided by the County and comply with TCEQ regulations for filing and posting a separate Notice of Intent ("NOI") and CSN for the Project. The Bidder/Contractor is not required by the County to prepare a separate SWP3 document or submit signed SWP3 inspection reports to TCEQ for the Project. However, the Bidder/Contractor must regularly inspect the SWP3 controls to ensure ongoing compliance and provide weekly written SWP3 inspection reports, in a report format provided by the County, to the County's inspector for inclusion in the County's SWP3 report filing for TCEQ.

Travis County is the Municipal Separate Storm Sewer System ("MS4") Operator receiving discharges from this Project, and will authorize the construction activities under the County's MS4 Permit # TXR040327 and Storm Water Management Program ("SWMP") Minimum Control Measure (MCM) 7 approved by TCEQ. Travis County is the Primary Construction Site Operator with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications. Travis County will provide the SWP3 as part of the Project plans and specifications; provide a signed CSN to be posted and maintained on the Project Site by the Bidder/Contractor with other required Notices and Permits; prepare and sign the SWP3 Inspection Reports required by TCEQ for assessing compliance with the SWP3 and describing any corrective actions necessary by the Bidder/Contractor; authorize and direct revisions and ongoing maintenance to the SWP3 by the Bidder/Contractor as necessary; and approve final stabilization and completion of SWP3 items for the Project.

By signing below on behalf of the Primary Construction Site Operator having day-to-day operational control of the construction activities for the Project, I certify under penalty of law that the Bidder/Contractor understands and agrees (1) to comply with the terms and conditions of the SWP3 for the Project and agrees to implement any corrective actions identified by the qualified County Inspector during a site inspection; (2) to comply with the terms and conditions of the Texas Pollutant Discharge Elimination System (TPDES) General Permit for storm water discharges from construction activities; and (3) that it is unlawful for any person to cause or contribute to a violation of water quality standards.

For: Smith Contracting Co Inc
(Name of Contractor)

By: Travis Ragland
(Typed Name of Authorized Representative – Responsible Corporate Officer, General Partner, or Sole Proprietor)

Signature: _____

Date: April 8, 2014

ATTACHMENT 6

ENVIRONMENTAL COMPLIANCE AND SAFETY RECORD

Pursuant to Sections 262.0275 and 271.0275 of the Texas Local Government Code, the County will consider the environmental compliance/safety record of the Contractor and may determine at its reasonable discretion the disqualification of Contractor which in response to the following question reveals more than 2 or more violations, with the severity and nature of the violations to be considered in the determination.

Has the Contractor, or the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution, received citations for violations of environmental laws within the past three years? Citations include, but are not limited to: notices of violation; suspensions/revocations of state/federal licenses or registrations; fines assessed; pending criminal complaints; indictments; convictions; deferred adjudications; administrative orders; draft orders; final orders; and final judgments. Any citations from the following agencies must be supplied: Environmental Protection Agency (EPA); Texas Commission on Environmental Quality or its past associated agencies such as the Texas Natural Resource Conservation Commission (TNRCC), the Texas Water Commission, and the Texas Air Control Board; and the Texas Department of State Health Services and its predecessor agency the Texas Department of Health. Also include any citations from environmental regulatory agencies of other states of the United States.

YES _____ NO

If the Contractor has indicated YES, the Contractor must provide to Travis County, with its proposal, the following information with respect to each citation:

Date of Citation, location of establishment inspected, category of citation, final disposition of citation, and penalty assessed.

Contract No. 4400001942

II. Contract Requirements
D. Attachments

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

I certify that I have made no willful misrepresentations in this Questionnaire and that I have not withheld any information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may result in non-award of the contract.


Signature

Vice President
Title

ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the 8 day of April, year 2014.



Mary Roxanne Jasek
Notary Public in and for the
State of Texas

Mary Roxanne Jasek
Printed Name of Notary
My Commission Expires January 29, 2017

**ATTACHMENT 7
Exhibit A**

**HISTORICALLY UNDERUTILIZED BUSINESS (HUB)
Subcontracting Participation Declaration Form**

This information must be submitted with your Contract.

Prime Contractor: Smith Contracting Co Inc

HUB: Yes No HUB Status (Indicate Gender & Ethnicity): _____

Certifying Agency (Check all applicable): St. Tx. Building & Procurement Comm. City of Austin Tx. Unified Cert. Pgm.

Address: 5308 Guinger St Phone No.: 612 990-7140 E-mail: smithcontinc@aatt.net

City: Austin State: TX Zip: 78728

Project Title: BARBLEY MEADOWS PARK FOOD REPAIR PROJECT IFB/RFP No.: 4400001942

Total Contract: \$ 518,305.00 Total HUB Subcontract(s): \$ 155,400

Construction HUB Goals: 12.9% MBE: 7.21 % 12.6% WBE: 3.47 %

(Sub-goals: 1.7% African-American, 9.7% Hispanic, 0.7% Native-American, 0.8% Asian-American Use these goals as a guide to diversify.)

FOR HUB OFFICE USE ONLY:

Verification date HUB Program Office reviewed and verified HUB SUB information. Date: _____ Initials: _____

PART I. HUB SUBCONTRACTOR DISCLOSURE

HUB Subcontractor Name: Kellystone Inc HUB Status (Gender & Ethnicity): WBE FN

Certifying Agency (Check all applicable): St. Tx. Bldg. & Procurement Comm. City of Austin Tx. Unified Cert. Pgm.

Address: P.O. Box 1237 City: Elgin State: TX Zip: 78621

Contact Person: Roland Helmenstein Title: _____ Phone No.: (512) 751-1999

Subcontract Amount: \$ 18,000.00 Percentage of Prime Contract: 3.47 %

Description of Work to be Performed: Conlock slope stabilization; Bid Item 21

HUB Subcontractor Name: Environmental Safety Services HUB Status (Gender & Ethnicity): MBE MH

Certifying Agency (Check all applicable): St. Tx. Bldg. & Procurement Comm. City of Austin Tx. Unified Cert. Pgm.

Address: 3707 E Hwy 290 #A-100 City: Dripping Springs State: TX Zip: 78620

Contact Person: Stacey Reinhart Title: Project Manager Phone No.: (512) 989-2259

Subcontract Amount: \$ 14,000.00 Percentage of Prime Contract: 2.70 %

Description of Work to be Performed: Fencing, Seeding; Item 9 & 53

Contract No. 4400001942

II. Contract Requirements
D. Attachments

PART I: (Continuation Sheet) HUB SUBCONTRACTOR DISCLOSURE (Duplicate as Needed)

HUB Subcontractor Name: MARIGS Trucking HUB Status (Gender & Ethnicity): WBE T MBE/FA
 Certifying Agency (Check all applicable): St. Tx. Bldg. & Procurement Comm. City of Austin Tx. Unified Cert. Pgm.
 Address: 2314 Wagon Crossing Path City: Austin State: TX Zip: 78744
 Contact Person: Anna Kellough Title: _____ Phone No.: (512) 441 - 0775
 Subcontract Amount: \$ 8400 Percentage of Prime Contract: 1.62 %
 Description of Work to be Performed: onsite Hauling; Bid Item COI-1

HUB Subcontractor Name: Juan Lopez Trucking HUB Status (Gender & Ethnicity): MBE MH
 Certifying Agency (Check all applicable): St. Tx. Bldg. & Procurement Comm. City of Austin Tx. Unified Cert. Pgm.
 Address: 250 Blackbird Ln City: Buda TX State: TX Zip: _____
 Contact Person: Alan Lopez Title: _____ Phone No.: (512) 295 3241
 Subcontract Amount: \$ 15,000.00 Percentage of Prime Contract: 2.89 %
 Description of Work to be Performed: Export Rock Rip Rap by the TON; Bid Item
NEW-2

HUB Subcontractor Name: _____ HUB Status (Gender & Ethnicity): _____
 Certifying Agency (Check all applicable): St. Tx. Bldg. & Procurement Comm. City of Austin Tx. Unified Cert. Pgm.
 Address: _____ City: _____ State: _____ Zip: _____
 Contact Person: _____ Title: _____ Phone No.: () _____
 Subcontract Amount: \$ _____ Percentage of Prime Contract: _____ %
 Description of Work to be Performed: _____

**-All HUB Subcontractor Participation may be
verified with the HUB Subcontractor(s) listed on Part I.-**

PART II: "STATEMENT OF NON-COMPLIANCE" FOR NOT MEETING HUB SUBCONTRACTING GOALS

Please complete Attachment 8, the Determination of "Good Faith Effort (GFE)" checklist and attach any supporting documentation (phone logs, fax transmittals, electronic mail, etc.) to demonstrate your good faith efforts in utilizing HUB subcontractors. Our firm was unable to meet the HUB goals for this project for the following reason(s):

_____ All subcontractors to be utilized are "Non-HUBs". (Complete Part III)

_____ HUBs solicited did not respond.

_____ HUBs solicited were not competitive.

_____ HUBs were unavailable for the following trade(s):

X We are able to fulfill all of the potential subcontracting opportunities with our own equipment, supplies, materials and/or employees. (Please explain below how you intend to fulfill the entire scope of the work.)

See Attached Equipment list; This project ~~was~~ uses Bid Items from the Onion Creek Greenway Phase 1 Project and the items selected have minimal sub participation.

If circumstances necessitate the use of any subcontractors, I agree to seek the timely authorization by the County and adhere to the submission of a HUB Subcontracting Participation Declaration form and GFE checklist.

Was the Travis County HUB Office contacted for assistance in locating HUBs? _____ Yes X No

Please explain: _____

PART III: DISCLOSURE OF OTHER "NON-HUB" SUBCONTRACTS

The Contractor shall use this area to provide a listing of all "Non-HUB" Subcontractors, to include suppliers, that will perform under this project. A list of those "Non-HUB" Subcontractors you select, after Contract execution, should be provided to the Purchasing Office not later than five (5) calendar days after being notified you will be awarded the Contract. A list of those "Non-HUB" Subcontractors that are selected after contract award must be provided IMMEDIATELY after their selection.

Subcontractor Name: TXI
Address: 2520 NE Smu Loop Bldg 2A City: Georgetown State: TX Zip: 78626
Contact Person: Lorraine Hannet Title: _____ Phone No.: (254) 947-2945
Subcontract Amount: \$ 1300 Percentage of Prime Contract: 0.25 %
Description of Work to be Performed: Concrete ; Bld Item # New-1

Subcontractor Name: Recreation Consultants of Texas
Address: 11660 Plano Rd City: Dallas State: TX Zip: 75243
Contact Person: Tracey Edyca Title: _____ Phone No.: (214) 503-7320
Subcontract Amount: \$ 65980.00 Percentage of Prime Contract: 12.73 %
Description of Work to be Performed: Installation at the X-GRASS 50 02 Superlum;
Bld Item # 72

Subcontractor Name: _____
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Percentage of Prime Contract: _____ %
Description of Work to be Performed: _____

Subcontractor Name: _____
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Percentage of Prime Contract: _____ %
Description of Work to be Performed: _____

Contract No. 4400001942

II. Contract Requirements
D. Attachments

I hereby certify that I have read the *HUB PROGRAM INSTRUCTIONS & INFORMATION*, truthfully completed all applicable PARTS of this form, and attached any necessary supporting documentation as required. I fully understand that intentionally falsifying information on this document may result in my not receiving a contract award or termination of any resulting contract.

Name (print or type): Travis Ragland
Title: Vice President
Signature: [Signature]
Date: 4-8-14
E-mail address: travisragland@ymail / smithcontinc@att.net

Contact person that will be in charge of invoicing for this project?

Name: Same as above
Title: _____
Phone: _____
E-mail address: _____

_____ Please send me information on the Community Mentor Protégé Initiative (CMPI) Program.
"CMPI is a volunteer program that seeks to help small, local and historically underutilized businesses to grow, develop and achieve success by pairing them with successful and established firms for a period of close association and collaboration."

**ATTACHMENT 7
Exhibit B**

DETERMINATION OF "GOOD FAITH EFFORT" (GFE) CHECKLIST

INSTRUCTIONS: In order to determine if a "Good Faith Effort" was made in soliciting HUBs for Subcontracting opportunities, the following checklist and supporting documentation, shall be completed by the Prime Contractor/Consultant, and returned with the Prime Contractor/Consultant's executed Contract. This list contains the minimum efforts that should be put forth by the Prime Contractor/Consultant when attempting to achieve or exceed the goals of HUB Subcontractor participation. The Prime Contractor/Consultant may extend his/her efforts in soliciting HUB Subcontractor participation beyond what is listed below.

DID THE PRIME CONTRACTOR/CONSULTANT:

- Yes No 1. to the extent practical, and consistent with standard and prudent industry practices, **divide** the contract work into the smallest **feasible** portions, to allow for maximum HUB Subcontractor participation?
- Yes No 2. **notify** in writing three or more HUBs, allowing no less than five working days prior to Contract execution, of the planned work to be subcontracted?
- Yes No 3. **provide** HUBs that were genuinely interested in bidding on a subcontract, **adequate** information regarding the project (*i.e. plans, specifications, scope of work, bonding and insurance requirements, and a point of contact within the Prime Contractor/Consultant's organization*).
- Yes No 4. **negotiate** in good faith with interested HUBs, and not reject bids from HUBs that qualify as lowest and responsive bidders?
- Yes No 5. **document** reasons HUBs were **rejected**? Was a written rejection notice, including the reason for rejection, provided to the rejected HUBs?
- Yes No 6. **If Prime Contractor/Consultant has zero (0) HUB participation, please explain the reasons why.**

If "NO" was selected, please explain and include any pertinent documentation with your Contract.

-SUGGESTED RESOURCES WHEN SOLICITING SUBCONTRACTORS-

TRADE ASSOCIATIONS	PHONE (512)	FAX	E-mail
Asian Contractors and Trade	926-5400	926-5410	Acta@cs.com
Austin Black Contractors	927-8290	467-9808	Brc-pro@swbell.net
Austin Hispanic Contractors	929-3363	929-3368	Hcanotas@aol.com
Austin Metropolitan United Black Contractors	784-1891	255-1451	Unism@sbcglobal.net
CERTIFYING AGENCIES TRAVIS COUNTY RECOGNIZES	CERTIFYING AGENCIES VENDOR DATABASE WEBSITES		
State of Texas Centralized Master Bidders List	www.tbpc.state.tx.us/cmb/		
City of Austin Minority Vendor Database	www.ci.austin.tx.us/purchasing		
Texas Unified Certification Program	www.tucp.org		

TRAVIS RASCANO
Printed Name of Authorized Representative
Vice President
Title

[Signature]
Signature
4/8/14
Date

**ATTACHMENT 7
Exhibit C**

**-Please submit this form for each HUB
Subcontractor/Subconsultant with proper signatures,
per the terms and conditions of your contract.-**

NOTICE OF INTENT (NOI)

**TO SUBCONTRACT WITH
HISTORICALLY UNDERUTILIZED BUSINESS (HUB)**
(For use by Prime Contractors/Consultants to Identify HUB Subcontractors)

Prime Contractors/Consultants are requested to complete this form and provide it to the Purchasing Agent Representative after contract award, but prior to beginning performance of the contract.



Contractor Name: _____ HUB: Yes No

Address: _____
Street City State Zip

Phone No.: () _____ Fax No.: () _____

Project Title & No.: _____

Prime Contract Amount: \$ _____



HUB Subcontractor Name: _____

HUB Status (Gender & Ethnicity): _____

Certifying Agency: Tx. Bldg. & Procurement Comm. City of Austin Tx. Unified Certification Pgm.

Address: _____
Street City State Zip

Phone No.: () _____ Fax No.: () _____

Proposed Subcontract Amount: \$ _____ Percentage of Prime Contract: _____%

Description of Subcontract Work to be Performed: _____



Printed Name of Contractor Representative _____ Signature of Representative _____ Date _____

Printed Name of HUB Representative _____ Signature of Representative _____ Date _____

Note: Nothing on this Notice of Intent Form is intended to confer any rights, expressed or implied, to any third parties.

PRE-APPROVAL FOR SUBCONTRACTOR SUBSTITUTIONS MUST BE OBTAINED FROM THE TRAVIS COUNTY PURCHASING AGENT REPRESENTATIVE. THE "HUB SUBCONTRACTOR/SUBCONSULTANT CHANGE FORM" MUST BE COMPLETED AND SUBMITTED TO THE HUB OFFICE, VIA FAX 512.854.9185.

ATTACHMENT 7
Exhibit D

TRAVIS COUNTY

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) - SUBCONTRACTOR PAYMENT REPORT

PRIME CONTRACTOR/CONSULTANT NAME: _____ AMOUNT OF PRIME CONTRACT: _____

PROJECT TITLE/No.: _____ AMOUNT OF ALL SUBCONTRACTS: _____

TOTAL CONTRACT PERIOD: From: _____ To: _____ PAYMENTS REPORTED FOR THE MONTH OF: _____ 20____

A	B	C	D	E	F	G
NAME OF HUB SUB-CONTRACTOR*	DESCRIPTION OF WORK	ORIGINAL SUB-CONTRACT AMOUNT	INCREASE OR DECREASE (MODIFICATION)	REVISED SUB-CONTRACT AMOUNT	PAYMENT THIS PERIOD	CUMULATIVE PAYMENTS

Instructions for completing this form:

- SECTION A:** Name all HUB Subcontractors performing on this project.
- SECTION B:** State the work being performed by the HUB Subcontractors.
- SECTION C:** State the original HUB Subcontractor amount.
- SECTION D:** State any increases or decrease, as a result of contract modifications or change orders, to the original HUB Subcontract (Section C) amount.
- SECTION E:** State the amended HUB Subcontract amount, to the Initial HUB Subcontract amount, as a result of any increase and/or decrease (Section D).
- SECTION F:** State the amount paid to each HUB Subcontractor during this reporting period.
- SECTION G:** State the total amount of payments made to-date (including amount from Section F) to the HUB Subcontractor.

I certify that the information listed on this report is true and accurate to the best of my knowledge. I fully understand that intentionally falsifying information on this document may result in TERMINATION OF MY CONTRACT.

Printed Name of Contractor Representative _____ Signature of Contractor Representative _____ Date _____ Report Number _____

-Please submit this form with your monthly invoices per the terms and conditions of your contract.-

*Prime contractors must obtain pre-approval from the Travis County Purchasing Agent and/or the HUB Coordinator of all changes involving Certified HUB Subcontractors. Modifications to the HUB Subcontractor Participation Plan are permitted only after award of the bid and solely with the prior written approval of the Purchasing Office.

ATTACHMENT 7
Exhibit E
HUB SUBCONTRACTOR/SUBCONSULTANT CHANGE FORM
(ADDITION, SUBSTITUTION, DELETION, REDUCTION, INCREASE)

CONTRACT #: _____	
CONTRACT DESCRIPTION: _____	
PRIME CONTRACTOR: _____	
REQUESTED BY: _____	CONTACT #: _____
DATE: _____	E-mail: _____

- *OBTAIN PRE-APPROVAL FROM THE TRAVIS COUNTY PURCHASING AGENT AND/OR THE HUB COORDINATOR OF ALL CHANGES INVOLVING CERTIFIED HUB SUBCONTRACTORS.*
- IF CONTRACTOR HAS DIFFICULTY IN LOCATING CERTIFIED HUB SUBCONTRACTORS CONTACT THE TRAVIS COUNTY HUB PROGRAM STAFF AT (512) 854-9700 FOR ASSISTANCE.

Check reason: _____ **Addition** _____ **Substitution** _____ **Deletion** _____ **Reduction** _____ **Increase**

REASON FOR ACTION:

- _____ Unavailable after receipt of reasonable notice to proceed.
- _____ Failure of performance.
- _____ Financial capacity.
- _____ Refusal by the subcontractor to honor the Contract price.
- _____ Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed upon.
- _____ Failure of the subcontractor to meet insurance, licensing, or bonding requirements.
- _____ The subcontractor's withdrawal of his bid or proposal.
- _____ Please provide me with a HUB Subcontractor listing.
- _____ I have already selected a potential HUB Subcontractor for this project. (List below)

SUBCONTRACTOR TO BE REPLACED: _____

REPLACEMENT: _____

REPLACEMENT'S STATUS:

Certified: HUB _____ M/WBE _____ DBE _____ Non-HUB _____ Unknown _____

INCREASED/DECREASED AMOUNT: Original Amt. \$ _____ New Amt. \$ _____

OTHER COMMENTS:

FAX TO: 512.854.9185 ATTN: HUB PROGRAM STAFF

REVIEWED BY HUB PROGRAM STAFF: Initials: _____ Date: _____

ATTACHMENT 10

**CERTIFICATE OF SECRETARY
(Required for Contractor if a corporation)**

I CERTIFY that:

I am the duly qualified and acting Secretary of Smith Contracting Co Inc
[Name of Corporation],

a duly organized and existing corporation of the State of Texas
[Name of State].

The following is a true copy of a Resolution duly adopted by the Board of Directors of such corporation in a meeting legally held on the 01 day of January, 2014 and entered in the minutes of such meeting in the minute book of the Corporation.

RESOLVED, that this corporation enter and that Travis Ragland
[Insert Name of Person Executing Contract]

the Vice President
[Position With Corporation] of this corporation, is authorized and directed to

execute on behalf of and as the act of this corporation the Proposal Form for the Travis County BARKLEY MEADOWS PARK FLOOD REPAIR PROJECT together with all associated documents and to execute on behalf of and as the act of the corporation all necessary documents to effect a written contract between this corporation and Travis County, Texas for the Construction of the Travis County BARKLEY MEADOWS PARK FLOOD REPAIR PROJECT. The Secretary is directed to attach a copy of the Contract Documents to the minutes of this meeting and to make them a part of the corporate records.

The above Resolution is in conformity with the Articles of Incorporation, and the Bylaws of the Corporation have never been modified or repealed and are now in full force and effect.

Date April 8, 2014

Secretary [Signature]

President [Signature]

ATTACHMENT 11 Non-Collusion Affidavit

Contractor declares that the only person or parties interested in this contract as Principals are those named herein; that this contract is made without collusion with any other person, firm, or corporation; that Contractor has carefully examined the Form of the Contract, Instructions to Contractor, Profiles, Grades, Specifications, and Plans therein referred to, and this contract is made in accordance therewith, taking into consideration the locations, conditions, and classes of materials of the proposed work; and agree(s) that they will provide all the necessary machinery, labor, tools, apparatus, and other means of construction, and will do all the work and furnish all the materials called for in the Contract and Specifications in the manner prescribed therein and according to the requirements of the County Executive of the Travis County Transportation and Natural Resources Department ("TNR") as therein set forth.

The undersigned affirms the truth and accuracy of this certification.

Smith Contracting Co Inc
Legal Firm Name

[Signature]
Signature

Address: 15308 Guinger St
Austin Tx 78728

Before me, the undersigned authority a Notary Public on this day personally appeared

Travis Ragland who, being by me duly sworn, upon oath says that he/she is qualified and authorized to make this affidavit for and on behalf of

Travis County(s), Texas, and is fully cognizant of the facts herein set out and affirms to the truth and accuracy of the certification made herein by signing above.

Subscribed and sworn to before me by the said Travis Ragland

this 8 day of April, 2014, to certify which witness my hand and seal of office.



Mary Roxanne Jasek
Notary Public in and for
Travis County, Texas

ATTACHMENT 12

Travis County Community Development Block Grant (CDBG) Program Information to Assist with D-U-N-S Number Registration

Travis County requires that all CDBG primary grant awardees and their first tier grant awardees create and/or validate Data Universal Numbering System (DUNS) registration data to be eligible for CDBG funds. All primary grant awardees must be registered, and ensure that their first tier awardees register *immediately*, following the guidance outlined below.

- **What is a D-U-N-S number and who provides it?** Dun & Bradstreet (D&B) maintains a business database containing information on more than 100 million businesses worldwide. D&B provides a D-U-N-S number, a unique 9-digit identification number, for each physical location of a business organization. D-U-N-S Number assignment is free for all businesses required to register with the U.S. Federal government for contracts or grants. The D-U-N-S number is used by a variety of federal websites to identify business organizations. Further detailed information on D&B is available at this URL: <http://fedgov.dnb.com/webform>.

Registering for a DUNS Number

1. To verify or register for a DUNS number, go to the Dun & Bradstreet Web site at: <http://fedgov.dnb.com/webform/displayHomePage.do>
2. The following information will be needed to obtain a DUNS number:
 - a. Name of organization
 - b. Organization address
 - c. Name of CEO/organization owner
 - d. Legal structure of the organization (corporation, partnership, proprietorship)
 - e. Year the organization started
 - f. Primary type of business

- g. Total number of employees (full and part time)

A DUNS number can often be issued in one business day.

**ATTACHMENT 12
DUNS Certification**

Subrecipient shall provide the Department with a Data Universal Numbering System (DUNS) number. The DUNS number must be provided in a document from Dun and Bradstreet. These documents must be provided to the Department prior to signing the Contract. Subrecipient shall maintain a current DUNS number for the entire Contract Term.

SECTION 32. DEBARRED AND SUSPENDED PARTIES

By signing this Contract, Subrecipient certifies that its principal employees, board members, agents, or contractors agents are not included in the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA). Subrecipient also certifies that it will not award any funds provided by this Contract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Subrecipient agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management (SAM) at www.sam.gov and including a copy of the results in its project files.

The undersigned is an authorized representative of a contractor or subcontractor performing work on a Travis County project that is partially or wholly funded by 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.C. § 5301 et seq.) The contractor/subcontractor will furnish all information and reports required by federal and state law.

WARNING: Falsifying information on this certification is a felony. HUD will prosecute false claims and statements. Conviction may result in civil and/or criminal penalties. (18 U.S.C. §§ 1001, 1010, 1012, 3559, 3571; 31 U.S.C. §§ 3729, 3802).

For: Smith Contracting Co Inc
(Name of Contractor)

By: Travis Regland
(Typed Name of Authorized Representative – Responsible Corporate Officer, General Partner, or Sole Proprietor)
Signature: [Handwritten Signature]

Date: April 8, 2014

ATTACHMENT 13

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS

Federal Executive Order 12549 requires Travis County to screen each covered potential contractor to determine whether each has a right to obtain a contract in accordance with federal regulations on debarment, suspension, ineligibility, and voluntary exclusion. Each covered contractor must also screen each of its covered subcontractors.

In this certification "contractor" refers to both contractor and subcontractor; "contract" refers to both contract and subcontract.

By signing and submitting this certification, the contractor/potential contractor accepts the following terms:

1. The certification herein below is a material representation of fact upon which reliance was placed when this contract was entered into. If it is later determined that the potential contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government or Travis County may pursue available remedies, including suspension and/or debarment.
2. The potential contractor shall provide immediate written notice to the person to which this certification is submitted if at any time the potential contractor learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The words "covered contract," "debarred," "suspended," "ineligible," "participant," "person," "principle," "proposal," and "voluntarily excluded," as used in this certification have meanings based upon materials in the Definitions and Coverage sections of federal rules implementing Executive Order 12549.
4. The potential contractor agrees by submitting this certification that, should the proposed covered contract be entered into, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by a federal department or agency, and/or Travis County, as applicable.

Do you have or do you anticipate having subcontractors under this proposed contract? YES NO

5. The potential contractor further agrees by submitting this certification that it will include this certification titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts "without modification, in all covered subcontracts"; and in solicitations for all covered subcontracts.
6. A contractor may rely upon a certification of a potential subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous. A contractor must at a minimum, obtain certifications from its covered subcontractors upon each subcontract's initiation and upon each renewal.
7. Nothing contained in all the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this certification document. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for contracts authorized under paragraph 4 of these terms, if a contractor in a covered contract knowingly enters into a covered subcontract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, any federal agency and/or Travis County may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS

Indicate in the appropriate box which statement applies to the covered contractor/potential contractor:

The contractor/potential contractor certifies, by submission of this certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency, the State of Texas, or Travis County.

The contractor/potential contractor is unable to certify to one or more of the terms in this certification. In this instance, the contractor/potential contractor must attach an explanation for each of the above terms to which he is unable to make certification. Attach the explanation(s) to this certification.

Name of Contractor

Vendor ID, or Social Security No.

Smith Contracting Co Inc.

74-27326e3

Signature of Authorized Representative Date

Printed/Typed Name & Title of Authorized Representative

Contract No. 4400001942

II. Contract Requirements
D. Attachments

**ATTACHMENT 14
TRAVIS COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACTOR ELIGIBILITY VERIFICATION FORM**

Complete one form for each Contractor AND Subcontractor PRIOR to entering into a contractual agreement.

Project Name: Barkley Meadows Park Flood Repair Project Contract Amount \$ 518,305.00

The following company is being considered as a possible (check one):

Prime Contractor Subcontractor

The firm is a: (check all that apply):

Sole Proprietorship Partnership Corporation
 Owner/Operator Woman Owned Business Section 3 Business Concern*
(include documentation)
 HUB (Historically Underutilized Business)

Company's full legal name: Smith Contracting Co Inc

Company's Tax ID # 74-2732663 DUNS # 83-513-0949

CCR Registration (optional): _____

Business Address: 15308 Ginger St Austin, Tx 78728

Company's Contact for Wage Compliance questions:

Name: Roxanne Jasek Title: Office Manager

Phone # 512-990-7640 Fax No. 512-990-7855

e-mail address: rjasek@att.net

Company Principals:

Name	Title	Phone Number
<u>Mack Smith</u>	<u>President</u>	<u>512-990-7640</u>
<u>Hardin Camp II</u>	<u>Vice President</u>	<u>512-789-5441</u>
<u>Travis Ragland</u>	<u>Vice President</u>	<u>512-694-2552</u>

Submit completed form and a screen shot of your DUNS information from the Dunn and Bradstreet website to cdbg@co.travis.tx.us or fax to 512-854-7140 to the attention of the CDBG Program. For questions or to obtain more information regarding the use of this form, contact Christy Moffett at 512-854-3460.

The prime or any subcontractors are prohibited from entering into any formal agreements or have a subcontractor begin work on a project until the Travis County Purchasing Office provides notice that the subcontractor has been cleared.

FOR OFFICE USE ONLY:

Verifications completed:

No Debarred or Suspension Record on sam.gov	Date: _____	BY: _____
Registered on sam.gov	Date: _____	BY: _____
Section 3 Business	Date: _____	BY: _____
Clearance sent to Purchasing:	Date: _____	BY: _____

Attachment 15
Compliance with Section 3
Travis County Community Development Block Grant (CDBG) Program

Section 3 Overview

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires that recipients of financial assistance provided by the U.S. Department of Housing and Urban Development (HUD), including developers, owners, and contractors and their subcontractors, provide, "to the greatest extent feasible", training and employment opportunities for low income area residents and contract opportunities for the performance of work by local businesses owned by and/or employing low income residents.

Applicability

Section 3 preference requirements apply to recipients of CDBG for a covered project for which the amount of assistance exceeds \$200,000. Contractors and subcontractors are subject to Section 3 requirements when the amount of assistance exceeds \$200,000 and the amount of the contract or subcontract exceeds \$100,000. If the amount of assistance exceeds \$200,000, but no contract exceeds \$100,000, the Section 3 preference requirements apply only to the recipients. Section 3 applies to subrecipients, professional services or construction work for housing rehabilitation, housing construction or other public construction projects.

Section 3 Residents and Business Concerns

A "section 3 resident" is: 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or Non-metropolitan County in which the Section 3 covered assistance is expended. Refer to Exhibit 1 for a definition of low and very low income resident.

A "Section 3 business concerns" are businesses that can provide evidence that they meet one of the following: 1) 51 percent or more owned by Section 3 residents; or 2) At least 30 percent of its fully time employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or 3) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs.

Section 3 Compliance

To comply with Section 3 requirements, the Travis County CDBG program will examine and consider amongst other factors the contractor's or vendor's potential for success by providing employment and business opportunities to low- and very low-income residents prior to acting

on any proposed contract award. Towards this end, the County will include a local opportunity plan for CDBG-sponsored projects. As part of the response to bid solicitations, request for proposals, services or qualifications, businesses will be required to certify that a Section 3 Local Opportunity Plan will be submitted to the County if they are awarded a CDBG-funded contract.

Section 3 Local Opportunity Plan

A sample local opportunity plan is attached as Exhibit 2 along with Section 3 definitions on Exhibit 3. Recipients will be expected to maintain documentation of activities and outreach attempts. Recipients can use the form in Exhibit 4 to document the eligibility of their workers as Section 3 eligible residents. Additional information about Section 3 can be found on HUD's website at the following URL:

<http://www.hud.gov/offices/fheo/section3/section3.cfm> .

Reporting

Contractors, consultants, subrecipients and subcontractors will be expected to complete the "Section 3 Report" found in Exhibit 5 to document efforts made to direct the employment toward low-and very low income persons and to document whether Section 3 residents were hired to fill any available positions. Reports must be submitted to the County on a quarterly basis throughout the contract period and a final report will be due 5 days after the project/contract close-out date. The quarterly reports will be due according to the following schedule:

- January 5th for activities undertaken from October through December;
- April 5^h for activities undertaken from January through March;
- July 5th for activities undertaken from April through June; and
- October 5th for activities undertaken from July through September.

If the 5th falls on a weekend or a holiday, the quarterly reports are due to Travis County on the next business day.

Exhibit 15-1: Section 3 Income Limits

All residents of public housing developments of the Travis County Housing Authority qualify as Section 3 residents. Additionally, individuals residing in Travis County who meet the income limits set forth below can also qualify for Section 3 status.	
Eligibility Guideline (Effective December 18, 2013)	
Number in Household	Low Income
1 individual	\$42,250
2 individuals	\$48,250
3 individuals	\$54,300
4 individuals	\$60,300
5 individuals	\$65,150
6 individuals	\$69,950
7 individuals	\$74,800
8 individuals	\$79,600

Exhibit 15-2: Section 3 Local Opportunity Plan

(Name of Contractor), hereby agrees to implement the following specific affirmative action steps to increase the utilization of business concerns located within the Travis County boundaries.

1. Implement procedures to notify Section 3 residents and business concerns about training and employment opportunities generated by Section 3 covered assistance.
2. Implement procedures to notify Section 3 business concerns about the availability of contracting and subcontracting opportunities generated by Section 3 covered assistance.
3. Use notification methods to reach a broad segment of Section 3 residents that may include advertising in local advertising media, placing signs at the project site, contacting the Travis County Housing Authority, and contacting community organizations, employment agencies, and other public or private institutions operating and servicing the project area.
4. Notify potential contractors and subcontractors contemplating work on Section 3 covered projects of their responsibilities.
5. Incorporate the Section 3 Clause (verbatim) into all covered solicitations and contracts as per Section 24 CFR Part 135.38.
6. Refrain from entering into contracts with contractors or subcontractors that are in violation of the Section 3 regulations.
7. Appoint or recruit a staff member to act as Equal Opportunity Officer to coordinate the implementation of this plan.
8. Submit quarterly reports as required by the Travis County CDBG program reporting Section 3 employment activities.
9. Maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.

We, the officers / representatives of _____, have read and fully agree to this plan, and agree to become a party to the full implementation of this program.

IN WITNESS WHEREOF, the undersigned, being duly authorized, has caused this document to be executed in its name on the _____ day of _____, _____.

Signature of Authorized Representative

Title

Exhibit 15-3: Section 3 Definitions

Employment Opportunities Generated by Section 3 Covered Assistance – all employment opportunities generated by the expenditure of Section 3 covered projects including management and administrative jobs. Management and administrative jobs include architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g. construction manager, relocation specialist, payroll clerk, etc.

Low Income Person – families (including single persons) whose incomes do not exceed 80% of the area median family income, with adjustments for smaller and larger families.

New Hires – full-time employees for permanent, temporary, or seasonal employment opportunities.

Section 3 – Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701u)

Section 3 Business Concern – a business concern,

- a. That is 51% or more owned by Section 3 residents; or
- b. Whose permanent, full-time employees include persons, at least 30-percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or

That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontractors to be awarded to business concerns that meet the qualifications set forth in paragraph “a” or “b” above.

Section 3 Definitions (continued)

Section 3 Covered Assistance –

- a. Assistance provided under any HUD housing or community development program that is expended for work arising in connection with the construction, reconstruction, conversion, or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development funds.
- b. Public housing development assistance provided pursuant to Section 4 of the 1937 Act;
- c. Public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- d. Public housing modernization assistance provided pursuant to Section 14 of the 1937 Act;

Section 3 Covered Contracts – a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

Section 3 Resident – a public housing resident or an individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended and who is considered to be a low to very-low income person.

Subcontractor – any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

Very low-income person – families (including eligible single persons) whose income does not exceed 50% of the area median family income, with adjustments for smaller and larger families.

Exhibit 15-4: Resident Employment Opportunity Data

Eligibility for Preference

A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program).

Certification for Resident Seeking Section 3 Preference in Training and Employment

I, _____, am a legal resident of the _____

_____ and meet the income eligibility guidelines for a low- or very-low-income person as published on the reverse.

My permanent address is: _____

I have attached the following documentation as evidence of my status:

- Copy of lease
- Copy of receipt of public assistance
- Copy of Evidence of participation in a public assistance program.
- Other evidence

Signature _____

Print Name _____

Date _____

Exhibit 15-5: Section 3 Report

Part I Agency and Contractor Information

Subrecipient /Contractor/Subcontractor Name:	Project Name:
	Contract Amount:
Report Date:	Contact Person Name: Phone Number:

Indicate the efforts you made to direct the employment and other economic opportunities generated by the CDBG financial assistance to the greatest extent feasible, toward low-and very low income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- _____ Attempted to recruit low income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or non-metropolitan county) in which the Section 3 covered project is located or similar methods
- _____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents
- _____ Participated in a HUD program or other program that promotes the award of contracts to businesses that meet the definition of a Section 3 business.
- _____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered projects is located.
- _____ Other; describe below.

Part II Information Regarding Agency/ Contractor Employment

Subrecipient / Contractor/Subcontractor Name:		Project Name:			
		Contact Person Name:			
Report Date:		Phone Number:			
For Subrecipients: Did your agency receive \$200,000 or more of CDBG funds for this project? For Contractors/Consultants: Is your contract in excess of \$100,000? If yes continue, if no then stop. (note for subcontractors: Section 3 applies if the primary contract exceeds \$100,000)		Yes	No		
Were there any new hires by your organization that were generated in connection with the CDBG award/project? "New hire" is defined as full time positions that are either permanent, temporary or seasonal. A new hire can be for a new position or replacement of an existing position that became vacant. If yes, please complete the following table in its entirety. If no, then stop.		Yes	No		
Job Category	Number of New Hires	Number of New Hires that are Sec 3 Residents	% of Aggregate Number of Staff Hours of New Hires that are Section 3 Residents	% of Total Staff Hours for Section 3 Employees and Trainees	Number of Section 3 Employees and Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade (List)					
Trade					
Trade					
Other (List)					
Total					

Section 3 resident/employee definition: A resident of public housing (regardless of income), or an individual residing in the metropolitan area or non metropolitan county in which the CDBG assistance is expended and whose income is below 80% of the metropolitan or county median income as published by HUD.

Exhibit 15-6: Section 3 Certification
(to be added to the contract)

- A. 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, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR 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.
- C. The contractor agrees to send to each labor organization or representative or 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 shall describe the Section 3 preference, shall 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 shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 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 CFR 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 CFR part 135.
- E. 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 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act .

- H. (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the

provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

- I. The contractor also agrees to adopt a Local Opportunity Plan, maintain documentation to support its implementation and report not less than a quarterly basis the results of their Section 3 efforts.

Certification

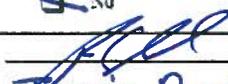
"I certify that I understand and will follow the Section 3 requirements presented above and have the capacity to comply, document, and report as necessary."

WARNING: Falsifying information on this certification is a felony. HUD will prosecute false claims and statements. Conviction may result in civil and/or criminal penalties. (18 U.S.C. §§ 1001, 1010, 1012, 3559, 3571; 31 U.S.C. §§ 3729, 3802).

Name of Contractor: Smith Contracting
By: TRANS ROBLAND
Title: Vice President
Date: 4/2/14

ATTACHMENT 16
DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <ul style="list-style-type: none"> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance 	<p>2. Status of Federal Action:</p> <ul style="list-style-type: none"> a. bid offer application b. initial award c. post-award 	<p>3. Report Type:</p> <ul style="list-style-type: none"> a. initial filing b. grant <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>Smith Contracting Co Inc 15208 Efinger St Austin, Tx 78728</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p>Tier _____, if known</p> <p>Congressional District, if known: _____</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p align="center">N/A</p> <p>Congressional District, if known: _____</p>
<p>6. Federal Department/Agency:</p> <p align="center">N/A</p>	<p>7. Federal Program Name/Description:</p> <p align="center">N/A</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p> <p align="center">N/A</p>	<p>9. Award Amount, if known:</p> <p>\$ N/A</p>	
<p>10. a. Name and Address of Lobbying Entry (if individual, last name, first name, MI):</p> <p align="center">N/A</p> <p>(attach Confirmation Sheet(s) SF-LLL-A, if necessary)</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p align="center">N/A</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ N/A actual <input type="checkbox"/> planned <input type="checkbox"/></p>	<p>13. Type of Payment (check all that apply):</p> <ul style="list-style-type: none"> a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other, specify: _____ <p align="center">N/A</p>	
<p>12. Form of Payment (check all that apply):</p> <ul style="list-style-type: none"> a. cash b. in-kind specify: nature N/A value _____ 		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p align="center">NONE</p> <p>(attach Confirmation Sheet(s) SF-LLL-A, if necessary)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: </p> <p>Print Name: Travis Ragland</p> <p>Title: Vice President</p> <p>Telephone No: 512-990-7640 Date: 4-8-14</p>	
<p>FEDERAL USE ONLY</p>	<p>Authorized for Local Reproduction Standard Form - LLL</p>	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secure to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity or this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0048), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

0345-0046

CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

[Empty reporting area for disclosure of lobbying activities]

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Standard Form - LLL-A