CAUSE NO. DC-15-12634-I

DAVIS CONSTRUCTION, INC, d/b/a DCI CONTRACTING, INC. Plaintiff,	§	IN THE DISTRICT COURT
VS.	§	162nd JUDICIAL DISTRICT
CITY OF DALLAS, TEXAS, Defendant.	§	DALLAS COUNTY, TEXAS

CITY OF DALLAS' BRIEF AND EVIDENCE IN SUPPORT OF ITS PLEA TO JURISDICTION AND FIRST SUPPLEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant City of Dallas ("City") and files this brief and evidence in support of its plea to jurisdiction and first supplement to its plea to jurisdiction and would show the Court the following:

I. Summary of Argument

The Plaintiff, Davis Construction Company, Inc. ("DCI") has sued the City arising out of construction contract dispute. For any suit against a governmental entity, a court does not have subject matter jurisdiction unless there has been a waiver of governmental immunity by statute or the constitution. Without any factual specifics, DCI has alleged four bases for a waiver of the City's governmental immunity. First, it claims a waiver under the City of Dallas' charter and Tex. Loc. Gov't Code, § 51.075. The Texas Supreme Court have expressly rejected the contention. Next, it claims waiver by estoppel but that too has been repeatedly rejected by the courts. DCI apparently claims a waiver through the Prompt Payment Act, but there is no waiver if there is a bona fide dispute between the parties. Here, there is a bona fide dispute. The last source of a waiver is sub-chapter 271 of the Texas Local Government Code. It provides a

limited waiver of governmental immunity for breach of contract claims. DCI only makes conclusory allegations as to its claims and seeks more than $1 million than was provided in the contract and the contract balance has been paid, except for the retainage. DCI's pleading do not allege a valid waiver. DCI should not be allowed to amend its pleading because it cannot cure the defect. Its claims are contrary to the terms of the contract and state law. There is no waiver of governmental immunity for these claims. Likewise, there is no waiver for DCI's claim for attorney fees. The City requests that the Court conclude it does not have subject matter jurisdiction and dismiss all of DCI's claims except that for the contract retainage. Alternatively, DCI should be ordered to replead with a valid and substantial claim within a statutory waiver of governmental immunity.

II. Factual and Procedural Background

The City and the Plaintiff, Davis Construction Company, Inc. ("DCI") entered into a construction contract on May 14, 2014. (Ex. 13 [Admission No. 1]). The work in the contract involved dirt excavation, dirt hauling, and dirt spreading as part of the overall improvements near the Trinity River, including the construction of a golf course. (Exs. 1, 15).

DCI agreed to perform the work required in the contract for a sum not to exceed $2,371,100 and complete the project in 200 days. (Ex. 1). DCI did not complete the contract within the term of the contract. (Ex. 15). The City has paid DCI all of contract price except for the retainage in the amount of $118,585.55 (Ex. 13 [Admission No. 6]; Ex. 15). DCI did not perform certain portions of the contract. (Ex. 13 [Admission Nos. 8, 9, 10, 11]; Ex. 15). DCI admits that it seeks recovery of more than the not to exceed sum of $2,371,100. (Ex. 13 [Admission No. 7]).

DCI claims that the City engineer made oral and written representations that DCI would get paid additional sums if it performed other or extra work not specified in the contract. (Ex. 14 [Interrogatory Nos. 3, 4]). As the project neared completion, DCI demanded a change order to the contract for this claimed work and when that had not occurred, DCI ceased work and abandoned the project. (Ex. 15). DCI's claim for additional monies grew to over $1 million by September, 2015. (Exs. 6-9). DCI has presented the City with 4 documents labeled OE1, OE-2, OE-3, and OE-4 that constitute the claims it asserts in this action. (Exs. 6-9; 13 [Interrogatory Nos. 2, 3]). These documents include over 30 separate claims for which DCI claims entitlement to payment. (Exs. 6-9). The City disputes DCI's entitlement to any of the sums that make up its claims. (Ex. 15).

DCI filed this action in October 2015. The City filed a plea to the jurisdiction, special exception, and in the alternative, its answer. In May 2016, the City filed its first supplement to its plea to the jurisdiction and special exceptions.

III. Standards of Review for Pleas to the Jurisdiction and Governmental Immunity

In Texas, governmental/sovereign immunity deprives a trial court of subject-matter jurisdiction for lawsuits against the State or other governmental units unless the State consents to suit. *See Tex. Dep't of Parks & Wildlife v. Miranda,* 133 S.W.3d 217, 224 (Tex. 2004); *Dallas Cnty. v. Wadley*, 168 S.W.3d 373, 376 (Tex. App.—Dallas 2005, pet. denied). To establish subject-matter jurisdiction against a governmental unit, a plaintiff' must establish, either by reference to a statute or express legislative permission, the legislature's consent to its lawsuit, or immunity from suit will deprive the trial court of subject-matter jurisdiction. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). A plaintiff must establish a clear and convincing waiver of governmental immunity for each claim asserted by the plaintiff. *City of*

Anson v. Harper, 216 S.W. 3d 384, 394 (Tex. App.—Eastland 2006, no pet.) (citing *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 405 (Tex. 1997)). Mere reference to a legislative waiver, however, does not establish a governmental entity's consent to be sued and is not enough to confer jurisdiction on the trial court. *See Tex. Dep't of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001) (holding that merely alleging the Tort Claims Act is not sufficient to establish jurisdiction). The plaintiff has the burden to allege and prove facts affirmatively demonstrating that the trial court has subject-matter jurisdiction. *See Texas Ass'n of Business v. Texas Air Control*, 852 S.W.2d 440, 446 (Tex. 1993). For the waiver to be effective, a plaintiff must plead and establish a constitutional or legislative waiver with facts that make the waiver applicable. *See Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 599 (Tex. 2001) (holding that the plaintiff had failed to allege facts to demonstrate a valid takings claim to invoke a waiver of immunity from suit); *Tex. Ass'n of Bus.*, 852 S.W.2d at 446 (holding that the pleader must allege facts that affirmatively demonstrate the court's jurisdiction to hear the cause). In order for there to be a waiver of governmental immunity, the plaintiff must plead a valid claim. *See Kaufman Cnty. v. Combs*, 393 S.W.3d 336, 345 (Tex. App.—Dallas 2012, pet. denied).

IV. There is No Waiver of Governmental Immunity Pursuant to Section 51.075 of the Texas Local Government Code or the City's Charter

DCI generally alleges a waiver of governmental immunity based of the City of Dallas' charter and Tex. Loc. Gov't Code, § 51.075. (Plaintiff's Petition at 3, ¶ 4.04).[1] It alleges no facts to support the contention and DCI fails to allege a waiver of governmental immunity. DCI cannot cure the defect with any pleading amendment because the contention is devoid of merit and has been repeatedly and expressly rejected. *See e.g. Tooke v. City of Mexia*, 197 S.W.3d 325, 342-46 (Tex. 2006*); Reata Const. Corp. v. City of Dallas,* 197 S.W.3d 371, 378 (Tex.

[1] The contract involved a governmental function. *See* Tex. Civ. & Prac. Rem. Code § 101.0215(a)(13).

2006); *Dallas Fire Fighters Ass'n v. City of Dallas.*, 231 S.W.3d 388, 388–89 (Tex. 2007) (per curiam). Neither the statute nor the charter provide a waiver of governmental immunity for DCI's claim and neither provides a basis for the Court's jurisdiction.

V. There is No Waiver of Governmental Immunity Pursuant to Waiver by Conduct

DCI alleges that the City's conduct waived its ability to deny payment. (Plaintiff's Petition at 4, ¶ 5.06). The pleading is unclear as to whether this is a claimed basis for a waiver of governmental immunity and DCI alleges no facts to support the contention and DCI fails to allege a waiver of governmental immunity. DCI cannot cure the defect with any pleading amendment because to the extent that DCI is attempting to argue estoppel or waiver by conduct as a basis for a waiver of governmental immunity, such contentions have been repeatedly rejected. *Sharyland Water Supply Corp. v. City of Alton,* 354 S.W.3d 407, 414 (Tex. 2011). The City's alleged estoppel is not a basis by which the Court can assert jurisdiction over these claims.

VI. Sub-Chapter I of Chapter 271 of the Texas Local Government Code Only Provides a Waiver as to DCI's Claim to the Retainage

A. The waiver under sub-Chapter I of Chapter 271 is limited.

DCI also claims a waiver of immunity pursuant to chapter 271, subchapter I of the Local Government Code. (Plaintiff's Petition at 2-3, ¶ 4.03). Texas Local Government Code section 271.152 provides:

> A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

Tex. Loc. Gov't Code § 271.152. A "contract subject to this subchapter" includes "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." Tex.

Loc. Gov't Code §271.151(2)(A). The waiver depends on a substantial claim that meets the Act's conditions. *Zachry Const. Corp. v. Port of Houston Auth.*, 449 S.W.3d 98, 109 (Tex. 2014). By "substantial" claim, the Texas Supreme Court meant that the claimant must plead facts with some evidentiary support that constitute a claim for which immunity is waived. *Id.* at 110. To avoid a dismissal for want of jurisdiction for a breach of contract suit against a governmental entity, the plaintiff must allege a term of the contract that can be breached. *See Livecchi v. City of Grand Prairie*, 109 S.W.3d 920, 922 (Tex. App.—Dallas 2003, pet. dism'd). (holding allegations did not show a term that could be breached).

In addition, immunity from suit is not waived on a claim for damages not recoverable under section 271.153. *See Zachry Constr.*, 449 S.W.3d at 110. Section 271.153(a) limits the total amount of money awarded in an adjudication brought against a local governmental entity for breach of a contract to

> (1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
>
> (2) the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;

Tex. Loc. Gov't Code §271.153(a). It also states that such an award may not include "consequential damages, except as expressly allowed under Subsection (a)(1)", "exemplary damages", or "damages for unabsorbed home office overhead." Tex. Loc. Gov't Code §271.153(b). Thus, "the Act does not waive immunity from suit on a claim for damages not recoverable under Section 271.153." *Zachry Construction*, 449 S.W.3d at 110. In order for the trial court to have jurisdiction over a contract claim asserted against a local governmental entity, the plaintiff must establish "a demand for certain kinds of damages" as limited by section 271.153. *Id.* at 109. Waiver of immunity under the Act "require[s] a showing of a substantial

claim that meets the Act's conditions," which requires that "the claimant must plead facts with some evidentiary support that constitute a claim for which immunity is waived." *Id.* at 109, 110. To determine if there is a waiver requires an examination of the contract terms to ascertain if the contract and claimed damages fit within any waiver of governmental immunity. *Zachry Construction*, 449 S.W.3d at 110-118 (examining contract terms to determine if an amount was owed); *Lubbock County Water Control and Improvement District v. Church & Akin, L.L.C.*, 442 S.W.3d 297, 302-308 (Tex. 2014) (examining contract terms to determine if goods and services provided); *City of Colleyville v. Newman*, No. 02-15-00017-CV, 2016 WL 1314470 at *4-5 (Tex. App.—Fort Worth March 31, 2016, pet. filed) (mem. op.)(examining terms of contract, concluding no balance due and owed because plaintiff was paid all compensation owed and "because the agreement expressly stated that no other compensation or benefit shall be paid to [the plaintiff].")

DCI does not allege the existence of a written contract that sets forth the essential terms of the agreement of providing goods and services that was properly executed by the City. Tex. Loc. Gov't Code §271.151(2). DCI does not allege that it seeks any sum authorized as a recoverable damage under Section 217.153. DCI alleges no facts and fails to allege a waiver of governmental immunity under § 271.152. Moreover, DCI should not be granted the opportunity to amend its pleadings because DCI cannot cure the defect with any pleading amendment.

As detailed below, there is no waiver of governmental immunity for DCI's claims because there could be no breach of the written contract and because there are no recoverable damages. The contract was for a sum not to exceed approximately $2.3 million. DCI has been paid the full contract price, except the retainage. It seeks another $1 million that were never part of the contract. Specifically, the City disputes DCI entitlement to additional sums, there is no

written contract properly executed by the City for these additional claims, the contract expressly denies many of the claims, there were no unpaid change orders, there were no other change orders or additional work directed by the City, no additional balance was due and owed, and consequential damages are prohibited. Also under the terms of the contract, City charter, and state law, no City employee was authorized to increase the contract amount. Further the amount of the contract increase claimed by DCI would violate state law because it was not funded and because of its size. The Court lacks jurisdiction over these additional claims.

B. There is no waiver for claims regarding "Approved Change Order Items" and other claimed directed work.

DCI makes no specific allegations about the contract or any change orders. Its discovery responses suggest that it makes several claims that were "approved change order" items and that it is entitled to extra compensation. (*See e.g.* Ex. 6 [OE-1, Items 102A, 102B, 102C, 102D, 102E, 102F, 102G, 222A, 640A, 640B, 640C]; Ex. 8 [OE-2, Items 102G, 222A, 223A]). It also claims other work was directed or approved. There have no change orders to this contract and there have been no approved change order items. (Ex. 15). The waiver of governmental immunity is limited to the balance due and owed under the contract and "amounts owed for change orders." Tex. Loc. Gov't Code §271.153(a)(2). The waiver does not include claimed amounts owed for proposed change orders. The contract was limited to a sum not to exceed $2,371,100. (Ex. 1). Other than the retainage, no balance is due and owed.

DCI may argue a waiver as to "the amount owed for ... additional work the contractor is directed to perform by a local governmental entity in connection with the contract." Tex. Loc. Gov't Code §271.153(a)(2). If it seeks to rely on such a contention it must be alleged and no such allegation is made. However, the defect cannot be cured by a pleading amendment. DCI has admitted that its claim of additional work was based on the oral and written directions of a

project engineer, not the City. (Ex. 14 [Interrogatory Nos. 3, 4]). The contract stated that "no verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions, or obligations contained in the Contract documents." (Ex. 2 [§ 104.1]). Elsewhere, the contract provides that extra work performed by the contractor, "as authorized and approved by the OWNER" and each change order shall be specific and final. (Ex. 2 [§109.3.1]). "Change order" is defined as a written order to the contractor authorizing and directing additional work within the scope of the contract documents or authorizing an adjustment in the contract price or contract time. (Ex. 2 [§ 101.1]). Under the terms of the contract, the project engineer could not direct any extra work that would require additional compensation.

The Dallas City Charter likewise prohibits such action. It provides that no contract shall be deemed executed on behalf of the City nor shall it be binding on the City unless signed by the city manager and approved as to form by the city attorney. (Ex. 10 [Chapt. XXII, § 1]). Any change orders must also be authorized by City Council unless state law allows delegation of that duty to the city manager. (Ex. 10 [Chapt. XXII, § 6]). State law requires that the governing body of the municipality approve any change orders but authorizes the delegation for change orders not exceeding $50,000. Tex. Loc. Gov't Code, § 252.048 (a, c). DCI does not seek a less than $50,000 modification to the contract. There was no change order or direction by the City and there was no possible breach for not paying these claims and no possible claim is alleged for something not possibly due and owed under the contract.

Thus, the waiver of governmental immunity for change orders or directions by municipalities for claims of increased contract price is limited to situation where the city council has approved the change order or direction, unless the price increase is under $50,000. The

conclusion is required by the consequences of modifications to contract. A modification to an existing contract creates a new contract. *Wes–Tex Tank Rental, Inc. v. Pioneer Natural Resources USA, Inc.*, 327 S.W.3d 316, 319 (Tex. App.—Eastland 2010, no pet.). Unless otherwise authorized by statute or charter, the power to enter contract for municipalities is only with their city councils. *City of Greenville v. Emerson*, 740 S.W. 2d 10, 13 (Tex. App.—Dallas 1987, no writ). For DCI claims, City Council action was required.

DCI assert a full-scale modification of the contract that would require the elimination of existing material terms, the addition of new material terms, and the increase of the contract price by more than $1 million. Since DCI claims the formation of a new contract through these major modifications, for a waiver of governmental immunity to exist based on this new contract, the new contract must be in writing, state the essential terms of the agreement, and be properly executed on behalf of the City. *Zachry Construction*, 449 S.W.3d at 106 (citing Tex. Loc. Gov't Code §271.151(2)(A)). There is no new written contract properly executed by the City and no agreement stating the essential terms that DCI now asserts. There is no waiver for these claims. *Also see ICI Const., Inc. v. Orangefield Indep. Sch. Dist.*, 339 S.W.3d 235, 239-40 (Tex. App.—Beaumont 2011, no pet.) (holding that purchase orders, pay applications, checks, and admissions of the District's superintendent did not comprise the essential terms of the parties' agreement because they failed to show the amount the district agreed to pay for the repairs and what was to be repaired).

The result is also directed by state law. First, state law mandates that the original contract price may not be increased by more than 25 percent. Tex. Loc. Gov't Code, § 252.048(d). The contract also stated that "the total contract amount shall not be increased more than 25 percent."

(Ex. 2, Section 104.2.1). DCI seeks compensation well beyond the 25 percent limitation which violate the contract and state law.

Second, the Texas constitution prohibit home-rule cities from amending contracts that do not have the amendments funded. One provision requires that "no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent." Tex. Const. art. XI, § 5. Another provides that "no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund." Tex. Const. art. XI, § 7. These provisions "prohibit any city's 'creating' or 'incurring' a 'debt for any purpose,' and 'in any manner,' without at the same time making the required 'provision.'" *McNeill v. City of Waco,* 33 S.W. 322, 323 (Tex. 1895); *see also Tex & New Orleans R.R. v. Galveston County*, 169 S.W.2d 713 (Tex. 1943), A "debt" under these constitutional provisions "means any pecuniary obligation imposed by contract." *McNeill*, 33 S.W. at 324; *accord Stevenson v. Blake,* 113 S.W.2d 525, 527 (Tex. 1938). A contract that creates a future pecuniary obligation which depends on the contingency of future events is still a debt. *Tex. & New Orleans R.R.*, 169 S.W.2d at 715. In determining whether a constitutional violation exists, the courts have looked to specific contract terms, and if a particular term resulted in an unfunded debt, the entire contract was void. *See, e.g., Tex. & New Orleans R.R.*, 169 S.W.2d at 715.

In recognition of these constitutional limitation, the Texas legislature adopted a statute that, with limited exceptions, requires the governing body of a municipality approve change orders, limits any increase to 25 percent, and states "the total contract price may not be increased

because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants." Tex. Loc. Gov't Code, § 252.048. The Dallas City Charter likewise states in part that if a change order becomes necessary "the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost by appropriating available funds for that purpose." (Ex. 10 [Ch. XXII, § 6]). The 25 percent limitation and the no unfunded requirement mandate that a decision to increase a contract price must be made by City Council and cannot be done by the oral or written direction of a project engineer.

DCI cannot allege or prove that that a balance is due and owed for these additional claims under the contract, that these additional amounts are owed for change orders, or that these additional amounts are owed for work directed by the City. There is no waiver of governmental immunity for these claims.

C. There is no waiver of governmental immunity for various claims because they are directly contrary and in violation of the contract.

1. No waiver for overages.

The exact nature of DCI's claims for extra compensation is not alleged. However, discovery has revealed the basis for some of the claims and the claims are directly contrary to the contract terms. For example, under the title "Original Contract Items", DCI apparently seeks additional monies for unclassified excavation and transporting dirt to Fill Areas 2 and 3. (Ex. 8, [OE-3, Items 103, 1343, 1346]). DCI admits it seeks compensation under the contract for overages of the bid quantities for each of these claims. (Ex. 13 [Admission Nos. 27, 28, 30). The contract states that the bid quantities for Bid Items 103, 1341, 1342, 1343, and 1344 "will not be renegotiated based on overages or underages of these bid items." (Ex. 4 [pp.4-5, ¶ 16]).

Payment has already been made for the maximum bid quantities for these items, except for retainage. (Exs. 13, [Admission No. 6]). There was no possible breach for not paying these claims for extra monies and no possible claim is alleged for something not possibly due and owed under the contract.

2. No waiver for deleting borrow areas.

DCI apparently asserts a claim based on the City's decision to delete an area, Borrow Area B, as a source of excavated soil. (Ex. 7 [OE-2 (Claims 2]); Ex. 13 [Admission Nos. 41, 43, 44]). There no allegations regarding this claim. The contract stated there were four borrow areas designated as Borrow Areas A, B, C, and D which were to be used to transport material to 4 fill areas, identified as Fill Area 1, Fill Area 2, Fill Area 3, and Fill Area 4. (Ex. 4 [p. 4, ¶ 9]; Ex. 13 [Admission No. 41]). The contract also said "the City will decide on the borrow areas used for this project as the grading plans may change" and "payment will be based on dirt brought to the fill areas regardless of the borrow area used or transported from." (Ex. 4 [p. 4, ¶ 9; p. 18, B-11]). There was no possible breach for not paying these claims and no possible claim is alleged for something not possibly due and owed under the contract.

3. No waiver for "rock excavation."

DCI apparently claims there was an unforeseen subsurface site condition in the material it was excavating. (Ex. 7 [OE-2, Claim 1]). There no allegations regarding this claim. The contract states DCI "shall make no claims for damages; additional compensation ... because of encountering actual conditions in the course of the work, which vary or differ from conditions or information in the Contract documents," "all risks of differing subsurface conditions shall be borne solely by the CONTRACTOR", and "the owner shall have no liability whatsoever for any claim arising from a differing, naturally occurring surface or subsurface condition.". (Ex. 2 [§

103.1, § 107.23.1]) There was no possible breach for not paying this claim and no possible claim is alleged for something not possibly due and owed under the contract. To the extent DCI claims this was based on some type of acceleration, as discussed below, there was no possible breach or sum due and owed.

4. No waiver for delay or acceleration claims.

DCI apparently asserts three delay claims. (Ex. 7 [OE-2, Claims 4, 6, 7]). Initially, there are no allegations related to the claims. Further, DCI asserts that much of the delay was caused by a third party rather than the City. (Ex. 7 [OE-2, Claims 6, 7]). The waiver for delay claims is limited to "the direct result of *owner-caused* delays or acceleration." Tex. Loc. Gov't Code §271.153(a) (emphasis added). There is no possible waiver for a claim of delay caused by others. Further, the contract specifically excluded delay expenses and damages from any possible sums that the City would ever pay. Section 108.8 provides:

> ... no adjustment shall be made to the CONTRACT price and CONTRACTOR may not be entitled to claim or receive any additional compensation as the result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in the adjustment of the Contract time, including but not limited to those cause in whole or in part by the acts, omissions, failures, negligence or fault of the OWNER, its officers, servants or employees.

(Ex. 3 [§ 108.8]). To the extent DCI claims that the City was the cause of any delay, the contract precluded DCI from ever being compensated for such a claim. With limited exceptions, this type of clause is enforceable. *Zachry Constr.*, 449 S.W.3d at 115. None of those exceptions are applicable to DCI's claims. DCI asserts separate delays of 6 days, 22 days, and 33 days. (Ex. 7 [OE-2, Claims 4, 6, 7]). There are no allegations or evidence that it was unable to work or that it was not also responsible for concurrent or other delays. There was no possible breach for not

paying these claims and no possible claim is alleged for something not possibly due and owed under the contract.

5. No waiver for lump sum payment items.

DCI apparently makes claims for more money for items related to dewatering, SWPPP, traffic control, and mobilization. (Ex. 6 [OE-1, Items 222, 125C, 1601A]; Ex. 8 [OE-3, Items 110, 645]). There no allegations regarding these claims. Each of these items was a separate bid item and were to be paid on a lump sum basis. (Ex. 1). That meant that compensation would be for all of the work based on performing the tasks related to the items for the entire duration of the project. (Ex. 4). There would be no additional payments for these items beyond the bid price item. DCI bid a total of $235,300 for these items and now seeks an additional $32,770. (*Compare* Ex. 1 and Exs. 6, 8). The City has paid for all of these items except for the retainage. (Ex. 13 [Admission No. 6]). There was no possible breach for not paying these claims and no possible claim is alleged for something not possibly due and owed under the contract.

VII. There is No Waiver of Governmental Immunity Pursuant to Prompt Payment Act

Plaintiff has asserted a claim under the Prompt Payment Act.[2] (Plaintiff's Petition at 4, § VI). Recovery under the Prompt Payment Act is barred if there is a bona fide dispute as to the claim. *See* Tex. Gov't Code, § 2251.002(a). The City disputes DCI's entitlement to any of the funds it claims. As explained above, DCI's admissions, the City's denials, and the terms of the contract establish that a bona fide dispute exists. (*See* Ex. 15). Indeed, those items establish that DCI is not entitled to payment. Because of the dispute, there is no waiver of governmental immunity for any claim under the Prompt Payment Act. *South East Texas Regional Planning*

[2] The petition cites to Tex. Gov't Code, § 2253.001 which is the McGregor Act concerning payment and performance bonds. There are no allegations concerning bonds and the City assumes the citation was a typographical error. To the extent, any claim is alleged under that statute, there is also waiver of sovereign immunity and the City specially excepts to the complete failure to allege any facts supporting a claim under it.

Commission v. Byrdson Services, LLC, 454 S.W.3d 581, 591 (Tex. App.—Beaumont 20015, pet. filed). The Court lacks jurisdiction over any purported claim under the Prompt Payment Act.

VIII. DCI'S Failure to Give Timely and Proper Notice Defeats Jurisdiction

Section 271.154 of the Texas Local Government Code provides that adjudication procedures, including notice requirements before bringing suit, that are established by the local government and incorporated into the contract are enforceable. Tex. Loc. Gov't Code, § 271.154. Pursuant to that authorization, the City adopted Section 2-86 of the Dallas City Code. (Ex. 11 [§2-86]). The ordinance was incorporated by reference into the contract. (Ex. 1 [Attachment I, § C]). DCI has failed to comply with the requirements of the ordinance.

Section 2-86 states that "a person may not file or maintain a lawsuit ... to recover damages for the city's breach of a city contract unless, as a condition precedent and a jurisdictional prerequisite to filing to filing the lawsuit", he person files a written notice of claim with the city manager within 180 days of the claimed breach setting forth the facts, legal theory, amount of damages, and supporting documentation. (Ex. 11 [§2-86(c)]). While DCI sent letters asserting entitlement to a change order in an apparent attempt to satisfy the notice requirements in the contract, prior to filing this suit, DCI did not file a notice of claim that complied with Section 2-86. (Ex. 15).[3] After the City filed its supplemental plea specifying DCI's failure, on or about May 31, 2016, DCI sent a notice of claim to the City Manager in a late attempt to comply with Section 2-86. (Ex. 15). However, the notice is well beyond 180 days from the accrual of any claim. The failure to comply with the requirements of Section 2-86 deprives the Court of jurisdiction.

In the alternative, Section 2-86 provides that the City Manager, with the concurrence of the City Attorney, may treat a notice of claim as a demand for nonbinding meditation. (Ex. 11

[3] The City denies that DCI complied with the notice requirements as stated in the contract.

[§2-86(l)]). In the alternative, the City elects to treat DCI's notice of claim as a demand for nonbinding mediation and the City requests that the Court enter an order staying all proceeding and order the parties to mediate within the next 60 to 90 days.

IX. There is No Waiver of Governmental Immunity for Attorney Fees

The Texas Supreme Court has repeatedly held that attorney's fees are recoverable only by statute or contract. *Holland v. Wal-Mart Stores, Inc.*, 1 S.W.3d 91, 95 (Tex. 1999). Here, the contract between the City and DCI does not include a provision authorizing the recovery of attorney fees and the City Council did not otherwise authorize payment of attorney fees to DCI. (Ex 1, 2, 3, 4, 15). To the contrary, the contract states that it is subject to Section 2-86 of the Dallas City Code and that the ordinance is incorporated by reference into the contract. (Ex. 1 [Attachment I, § C). Section 2-86 states the requirements for asserting breach of contract claims against the City. The ordinance states that a claimant "*is not entitled to attorney fees*, either as part of the damages calculated in the notice of the claim or in any subsequent lawsuit." (Ex. 11) (emphasis added). Additionally, Section 2-35 of the Dallas City Code states unless otherwise authorized by City Council, "no contractor of the city is entitled to interest on any late payment or delayed payment that is caused by any good faith claim or dispute in connection with the contract, . . . , nor is any contractor entitled to attorney's fees in any dispute to collect such payment." (Ex. 11 [§2-35]). Thus, the contract and City ordinances specifically state no attorney fees are recoverable in a breach of contract claim or lawsuit.

DCI alleges that it is entitled to attorney fees pursuant to Section 38.01 of the Texas Civil Practices and Remedies Code. (Plaintiff's Petition at 5, ¶ 7.02). Section 38.01 is not applicable to municipalities. *See City of Terrell v. McFarland*, 766 S.W.2d 809, 813 (Tex. App.—Dallas 1988, writ denied); *City of Corinth v. NuRock Dev., Inc.*, 293 S.W.3d 360, 370 (Tex. App.—Fort

Worth 2009, no pet.); *City of McAllen v. Casso*, No. 13–11–00749–CV, 2013 WL 1281992, *13 (Tex. App.—Edinburg March 28, 2013, no pet.) (Section 38.001 "no longer authorizes the award of attorney's fees against a municipality"); *Crawford v. Texas Dept. of Transp.,* No. No. 03-04-00029-CV, 2004 WL 1898257, *3 (Tex. App.—Austin August 26, 2004, no pet.) ("the State and its subdivisions are not considered individuals or corporations for purposes of this statute and therefore cannot be ordered to pay attorney's fees under section 38.001"); *Texas A & M Univ.–Kingsville v. Lawson*, 127 S.W.3d 866, 874 (Tex. App.—Austin 2004, pet. denied).

DCI alleges that it is entitled to attorney fees pursuant Section 271.173 of the Texas Local Government Code. (Plaintiff's Petition at 5, ¶ 7.02). Section 271.153(a)(3) provides a limited waiver of governmental immunity for attorney fees for breach of contract claims within sub-chapter 271. However, this provision does not serve as a substantive basis for attorney's fees.

The statute itself limits its application solely to waiving immunity; it "does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity." Tex. Loc. Gov't Code § 2271.155. Also, Section 271.153(a)(3) does not state that a party suing a local government "may recover" reasonable attorney's fees; instead, it states that "the total amount of money awarded in an adjudication against a local governmental entity for a breach of the contract subject to this subchapter is limited to the following ... reasonable and necessary attorney's fees that are equitable and just." *Id.* at § 271.153(a)(3). This text limits the waiver of immunity for attorney-fee claims against a local government to the recovery of attorney's fees that are "reasonable and necessary" and "equitable and just"; it does not create a right to those fees. Finally, the waiver of immunity in Section 271.152 is subject to the statute's other terms as limitations on the waiver of immunity." *Zachry*,

449 S.W.3d at 108. The statute "waives immunity for contract claims that meet certain conditions" and merely defines "to what extent immunity has been waived." *Id.* at 109–110. Thus, the statute does not create the entitlement to recovery of attorney fees.

No possible valid claim for attorney fees exists and the Court lacks jurisdiction over any claim for attorney fees.

X. Conclusion and Prayer

WHEREFORE, the City requests that its plea to jurisdiction and supplement be sustained, in whole or in part, or in the alternative, that is special exception be granted in whole or in part, or in the alternative, that it be granted such other and further relief as requested herein, general or special, at law or in equity, or as to which the City may be entitled.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS

By *__/s/ Charles Estee*
CHARLES ESTEE
Charles.Estee@dallascityhall.com
Assistant City Attorney
State Bar of Texas No. 06673600
7BN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone – 214/670-3519
Telecopier – 214/670-0622

CERTIFICATE OF SERVICE

I certify that opposing counsel was served with a true and correct copy of the foregoing document via e-service through and electronic filing service provider on this 13th day of June, 2016.

/s/ Charles Estee

SUPPORTING EVIDENCE

1. Contract between the City and DCI
2. Excerpts of General Conditions to the Contract
3. Excerpts of City Addendum to General Conditions to the Contract
4. Excerpts of Special Provisions of the Contract
5. Excerpts of the Plans and Specifications of the Contract
6. DCI's Claim, OE-1
7. DCI's Claim, OE-2
8. DCI's Claim, OE-3
9. DCI's Claim, OE-4
10. Excerpts of the Dallas City Charter
11. Excerpts of the Dallas City Code
12. Authenticating Affidavit
13. Excerpts of DCI Responses to Requests for Admissions
14. Excerpts of DCI Response to Interrogatories
15. Affidavit of Sarah Standifer

EXHIBIT 1

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

MAY 14, 2014

14-0790

Addendum Addition 6: Authorize a contract with DCI Contracting, Inc., lowest responsible bidder of five, for closed landfill improvements associated with the Simpkins Remediation located at 5950 Elam Road, 6300 Great Trinity Forest Way Boulevard, and 811 Pemberton Hill Road - Not to exceed $2,371,711 - Financing: Stormwater Drainage Management Capital Construction Funds ($2,000,000) and Company of Trinity Forest Golfers Funds ($371,711) (to be reimbursed by the Company of Trinity Forest Golfer's, Inc.)

Adopted as part of the consent agenda.

WHEREAS, on May 28, 2008, Resolution No. 08-1591 authorized acquisition of approximately 1,415 acres of land located near the intersection of Loop 12 and Pemberton Hill Road from Metropolitan Sand and Gravel Company, L.L.C. or its successor, and approximately 111 acres of land located near the intersection of Linfield Road and Hull Avenue from Weir Bros. Partners, L.L.C., for the Trinity River Corridor Project; and,

WHEREAS, on May 28, 2008, Resolution No. 08-1591 authorized the City Attorney to assume, on behalf of the City, the responsibility for the costs to remediate environmental conditions on the Metropolitan Tract and the Linfield Tract known by the City as of the date the settlement closed, and to waive any right to contribution for those costs from Metropolitan Sand and Gravel Co., L.L.C. and Weir Brothers Partners, L.L.C., including their officers, successors, and assigns; and,

WHEREAS, Terracon Consultants Inc., conducted a Phase I Environmental Site Assessment on August 24, 2005. In addition, Terracon also prepared a Limited Solid Waste Evaluation Report on October 12, 2005, a Limited Site Investigation on January 8, 2008, and a Methane and Landfill Cap Evaluation and Proposed Response Actions on January 30, 2008. Based on the preliminary investigation and findings, Terracon Consultants, Inc. recommends further detailed investigations and assessment, before remedial designs are prepared; and,

WHEREAS, on October 22, 2008, Resolution No. 08-2874 authorized a professional services contract with Terracon Consultants Inc., for such detailed environmental investigation, assessment, remedial designs, and coordination with TCEQ, in an amount not to exceed $814,464.00, and,

WHEREAS, on May 15, 2013, Resolution No. 13-0776 authorized a lease agreement with the nonprofit corporation, Company of Trinity Forest Golfers, Inc. (CTFG) for development, management and operation of a championship golf course; and,

WHEREAS, on April 9, 2014, Resolution No. 14-0627 authorized an engineering design contract with Pacheco Koch Consulting Engineering, Inc. for the engineering design for improvements associated with Elam Road and Simpkins Remediation in an amount not to exceed $842,290.00; and,

WHEREAS, on April 9, 2014, Resolution No. 14-0628 authorized a construction contract with L. D. Kemp Excavating, Inc. for the construction of closed landfill improvements for Simpkins Remediation in an amount not to exceed $2,530,276.20, this being the lowest responsive bid as indicated by the tabulation of bids; and,

WHEREAS, on April 9, 2014, Resolution 14-0629 authorized Supplemental Agreement No. 1 to the engineering services contract with Terracon Consulting, Inc. for additional detailed environmental investigation, assessment, remedial designs, and coordination with TCEQ associated with Simpkins Remediation in an amount not to exceed $273,720.00; increasing the contract from $814,464.00 to $1,088,184.00; and,

WHEREAS, bids were received on May 1, 2014, for the construction of closed landfill improvements for Simpkins Remediation, as follows:

BIDDERS	BID AMOUNT
DCI Contracting, Inc.	$2,371,711.00
Vilhauer Enterprises	$2,798,692.90
Longhorn Excavators, Inc.	$3,350,799.60
L.D. Kemp Excavating, Inc.	$3,463,246.10
FCS Construction	$3,583,785.65

WHEREAS, it is now necessary to enter into a contract with DCI Contracting, Inc. lowest responsible bidder of five, for closed landfill improvements associated with the Simpkins Remediation located at 5950 Elam Road, 6300 Great Trinity Forest Way Boulevard, and 811 Pemberton Hill Road in an amount not to exceed $2,371,711.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the City Manager is hereby authorized to enter into a contract with DCI Contracting, Inc. lowest responsible bidder of five, for closed landfill improvements associated with the Simpkins Remediation located at 5950 Elam Road, 6300 Great Trinity Forest Way Boulevard, and 811 Pemberton Hill Road in an amount not to exceed $2,371,711.

Section 2. That the City Manager is hereby authorized to execute the contract after approval as to form by the City Attorney.

Section 3. That the City Controller is hereby authorized to receive and deposit funds in the amount of $371,711.00 from the Company of Trinity Forest Golfers, Inc. in the Company of Trinity Forest Golfers Fund, Fund 0289, Dept. TWM, Revenue Source 8476, Act. CTFG.

Section 4. That the City Manager is hereby authorized to establish appropriations in the amount of $371,711.00 in the Company of Trinity Forest Golfers Fund 0289, Dept. TWM, Unit P891, Object 4599.

140790

Resolution No. 14-0790

CONTRACT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

THIS MEMORANDUM OF AGREEMENT this day made and entered into by and between the CITY OF DALLAS, a Texas municipal corporation, hereinafter called "Owner", and DAVIS CONSTRUCTION, INC. D/B/A "DCI CONTRACTING, INC.", organized as a Michigan corporation and authorized to do business in Texas and having a local office at 2045 East Highway 380, Suite 100, Decatur, Texas 76234, hereinafter called "Contractor".

WITNESSETH:

I.

That for the consideration hereinafter agreed to be paid by Owner, Contractor undertakes, covenants and agrees to perform the work herein contracted to be done, in every detail conforming to the advertisement, bid proposal, City's Standard Specifications for Public Works Construction (Fourth Edition, 2004), as amended, and all other specifications, including special provisions, addendums, plans, or working drawings, Attachment I hereto and performance and payment bonds, all of which above said instruments are hereby incorporated in their entirety herein as though written word for word, on a certain Public Work described as closed landfill improvements associated with the Simpkins Remediation, in the City and County of Dallas, Texas for a sum not to exceed **TWO MILLION, THREE HUNDRED SEVENTY-ONE THOUSAND, SEVEN HUNDRED ELEVEN AND NO/100 ($2,371,711.00) DOLLARS.**

II.

Contractor hereby agrees to commence the work under this Contract on a date to be specified in a work order of the Engineer, and to complete fully all work hereunder within two hundred (200) calendar days thereafter. The Contractor further agrees to pay as liquidated damages the sum of Five Hundred ($500) Dollars for each consecutive calendar day thereafter, as provided in Item 108.8.1 of the Standard Specifications for Public Works Construction, as may be modified by the City's Addendum to the Standard Specifications, October 2011 Edition, incorporated by reference as a part of this Contract for all purposes.

III.

Owner agrees to make partial payments to the Contractor in accordance with Item 109.5.1 of the Standard Specifications for Public Works Construction, as may be

modified by the City's Addendum to the Standard Specifications. The percentage retained by Owner will be as provided in Item 109.5.2 of the Standard Specifications for Public Works Construction, as may be modified by the City's Addendum to the Standard Specifications. Contractor shall furnish the Engineer information as may be requested to aid him as a guide in the preparation of partial estimates.

IV.

It is further mutually agreed that should it appear to Owner or to the Engineer in charge that, at any time during the existence of this Contract, the surety on the said Contractor's bond has become insolvent, bankrupt or otherwise financially unable to protect Owner under the terms of the Contract, Owner may demand that Contractor furnish additional or substitute surety through some approved surety company satisfactory to Owner; the act of Owner or the Engineer with reference to demanding additional or substitute surety shall never be construed to relieve the original surety of its obligation under the Contract. Owner may stop the work under the Contract until the additional or substitute surety has been furnished by the Contractor, and Owner shall in no case be liable to Contractor on account of any suspension of work. Further, substitution of the surety or suspension of work under the circumstances of this Paragraph shall not serve as an extension of the performance time requirements set forth in Paragraph II, nor as a waiver of the liquidated damages due thereunder. Owner may exercise its right, as provided under this Contract, to take charge of the work in the event of the refusal or failure of the Contractor to comply with the demands of Owner with reference to furnishing additional or substitute surety.

V.

Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from Contractor, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

VI.

That in consideration of Contractor's fully and faithfully complying with all the terms, provisions and stipulations of this Contract, Owner undertakes, covenants and agrees to pay to Contractor for the furnishing of all material and labor and the performance of the work contracted for, the prices contained in the bid proposal of Contractor, which prices shall be the full compensation to be received by Contractor under the terms of this Contract, consistent with the not-to-exceed sum stated in Paragraph I, which prices are as follows:

140790

Simpkins Vegetative

25-Apr-14 Bid Opening Date: 01-May-14

Schedule 1: Base Bid

Item No	Qty	Unit	Description	Unit Price	Amount
Beginning for Schedule 1: Base Bid:					
101	35	Acres	For CLEARING AND GRUBBING, complete in place. TWENTY-ONE HUNDRED DOLLARS NO CENTS	2,100	73,500
103.	656418	Cu. Yd.	For Unclassified Excavation, complete in place. NO DOLLARS FIFTY - CENTS	.50 ~~.55~~	328,209 ~~361,029.90~~
110	1	Lump Sum	For MOBILIZATION, complete in place. ONE-HUNDRED EIGHTEEN THOUSAND DOLLARS NO CENTS	118,000	118,000
222	1	Lump Sum	For Dewatering, complete in place. FIFTY-THOUSAND DOLLARS NO CENTS	50,000	50,000
521A	220	Ton	For Stabilized Construction Entrance, complete in place. FORTY DOLLARS NO CENTS	40	8,800
607A	500	Sq. Yd.	For Bermuda/St. Augustine Block Sodding, complete in place. FIVE DOLLARS NO CENTS	5	2,500
608	1000	Sq. Yd.	For Bermuda/St. Augustine Hydromuch, complete in place. ONE DOLLAR NO CENTS	1	1,000
639A	475	Each	For Remove Tree (6-12 Inches Diameter), complete in place. NINETY DOLLARS NO CENTS	90	42,750
639B	300	Each	For Remove Tree (13-24 Inches Diameter), complete in place. ONE-HUNDRED SEVENTY-FIVE DOLLARS NO CENTS	175	52,500
639C	40	Each	For Remove Tree (Lager than 24 Inches Diameter), complete in place. FOUR-HUNDRED DOLLARS NO CENTS	400	16,000

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 1: Base Bid

Item No	Qty	Unit	Description	Unit Price	Amount
645	41000	Lin. Ft.	For GEOTEXTILE SILT FENCING, complete in place. ONE DOLLAR THIRTY CENTS	1.30	53,300
645B	5	Each	For Rock Check Dam, complete in place. FIFTEEN HUNDRED DOLLARS NO CENTS	1,500	7,500
900	1	Lump Sum	For Project Partnering, complete in place. SIXTY-FIVE HUNDRED DOLLARS NO CENTS	6,500	6,500
1225C.	1	Cu. Yd.	For Provide SWPPP and Implementation., complete in place. FOUR THOUSAND DOLLARS NO CENTS	4,000	4,000
1341	213827	Cu. Yd.	For Transport Dirt to Fill Area 1, complete in place. ONE DOLLAR EIGHTY CENTS	1.80	384,888.60
1342	204892	Cu. Yd.	For Transport Dirt to Fill Area 2, complete in place. TWO DOLLARS TWENTY-FIVE CENTS	2.25	461,007
1343	179482	Cu. Yd.	For Transport Dirt to Fill Area 3, complete in place. ONE DOLLAR NINETY CENTS	1.90	341,015.80
1344	58217	Cu. Yd.	For Transport Dirt to Fill Area 4, complete in place. ONE DOLLAR EIGHTY CENTS	1.80	104,790.60
1345	100	Cu. Yd.	For Solid Waste Removal (Off CAP), complete in place. FIFTY DOLLARS NO CENTS	50	5,000
1601A	1	Lump Sum	For Traffic Control, complete in place. TEN THOUSAND DOLLARS NO CENTS	10,000	10,000

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 1: Base Bid

Item No	Qty	Unit	Description	Unit Price	Amount
1652	4	Each	For LOCATE UNGD. UTY NOT UND PAVE, complete in place. FIVE-HUNDRED Dollars No Cents	500	2,000
1653	2	Each	For LOCATE UNGD. UTY UND CON PAVE, complete in place. Fifteen-HUNDRED Dollars No Cents	1,500	3,000

Subtotal for Schedule 1: Base Bid: 2,076,261

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 2: Alternate Bid 1

Item No	Qty	Unit	Description	Unit Price	Amount
Beginning for Schedule 2: Alternate Bid 1:					
103A.	120000	Cu. Yd.	For UNCLASSIFIED EXCAVATION FOR BORROW AREA D, complete in place. NO DOLLARS SEVENTY CENTS	.70	84,000
222A.	1	Lump Sum	For DEWATERING AND DEBRIS REMOVAL FOR BORROW AREA D, complete in place. [illegible] NO CENTS	35,000	35,000

Subtotal for Schedule 2: Alternate Bid 1: 119,000

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 3: Alternate Bid 2

Item No	Qty	Unit	Description	Unit Price	Amount
Beginning for Schedule 3: Alternate Bid 2:					
1345A.	47000	Cu. Yd.	For CLAY CAP FOR BORROW AREAS A, B, AND/OR D, complete in place. SIXTEEN DOLLARS AND CENTS	16	752,000

Subtotal for Schedule 3: Alternate Bid 2: 752,000

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 4: Alternate Bid 3

Item No	Qty	Unit	Description	Unit Price	Amount
Beginning for Schedule 4: Alternate Bid 3:					
1346	137500	Cu. Yd.	For Process/Compact Fill at Structural Fill Locations, complete in place. ONE DOLLAR FIFTY CENTS	1.50	206,250

Subtotal for Schedule 4: Alternate Bid 3: 206,250

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 6: Alternate Bid 4

Item No	Qty	Unit	Description	Unit Price	Amount
Beginning for Schedule 6: Alternate Bid 4:					
640A	525	Each	For REMOVE TREE (6 - 12 INCHES DIAMETER), complete in place. ONE HUNDRED TEN DOLLARS NO CENTS	110	57,750
640B	110	Each	For REMOVE TREE (13 - 24 INCHES DIAMETER), complete in place. ONE HUNDRED NINETY-FIVE DOLLARS NO CENTS	195	21,450
640C	20	Each	For REMOVE TREE (LARGER THAN 24 INCHES DIAMETER), complete in place. FIVE HUNDRED DOLLARS NO CENTS	500	10,000
				Subtotal for Schedule 6: Alternate Bid 4:	89,200

Simpkins Vegetative

25-Apr-14 **Bid Opening Date: 01-May-14**

Schedule 6: Alternate Bid 5

Item No	Qty	Unit	Description	Unit Price	Amount
Beginning for Schedule 6: Alternate Bid 5:					
103B	68582	Cu. Yd.	For UNCLASSIFIED EXCAVATION FOR CONTINGENCY, complete in place. NO DOLLARS EIGHTY - CENTS	.80	54,865.60
1341A.	1000	Cu. Yd.	For TRANSPORT DIRT TO FILL AREA 1., complete in place. ONE DOLLARS EIGHTY-FIVE CENTS	1.85	1,850
1342A.	65564	Cu. Yd.	For TRANSPORT DIRT TO FILL AREA 2., complete in place. TWO - DOLLARS THIRTY - CENTS	2.30	150,797.20
1343A.	1018	Cu. Yd.	For TRANSPORT DIRT TO FILL AREA 3., complete in place. ONE DOLLAR NINETY-FIVE CENTS	1.95	1,985.10
1344A.	1000	Cu. Yd.	For TRANSPORT DIRT TO FILL AREA 4., complete in place. ONE DOLLAR EIGHTY-FIVE CENTS	1.85	1,850

Subtotal for Schedule 6: Alternate Bid 5: 211,347.90

140790

Simpkins Vegetative

25-Apr-14

Bid Opening Date: 01-May-14

Item No	Qty	Unit	Description	Unit Price	Amount

Total Amount Bid for Schedule 1: Base Bid:	2,076,261
Total Amount Bid for Schedule 2: Alternate Bid 1:	119,000
Total Amount Bid for Schedule 3: Alternate Bid 2:	752,000
Total Amount Bid for Schedule 4: Alternate Bid 3:	206,250
Total Amount Bid for Schedule 5: Alternate Bid 4:	89,200
Total Amount Bid for Schedule 6: Alternate Bid 5:	211,347.90
Project Total:	3,454,058.90

I acknowledge receipt of :

Addendum No. 1
Addendum No._____
Addendum No._____
Addendum No._____

I agree with the amount and unit prices.
NAME OF BIDDER

GREG SHERMAN
DCI CONTRACTING, INC.

Addendum #1

EXECUTED as of this, the 14th day of May, 2014, by Owner, signing by and through its City Manager, duly authorized to execute same by Resolution No. 14-0790, adopted by the City Council on May 14, 2014, and by Contractor, acting through its duly authorized officials.

APPROVED AS TO FORM:
WARREN M. S. ERNST
City Attorney

BY _____
Assistant City Attorney

CITY OF DALLAS
A. C. GONZALEZ
City Manager

BY _____
Assistant City Manager

CONTRACTOR: DAVIS CONSTRUCTION, INC. D/B/A "DCI CONTRACTING, INC."
a Michigan corporation

BY _____
Authorized Representative
DAVID M. PROCTOR, V.P.

[Revised 10-24-2011]

ATTACHMENT I

A. CONFLICT OF INTEREST

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

B. GIFT TO PUBLIC SERVANT

City may terminate this Contract immediately if Contractor has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Contractor to remove any employee of the Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

C. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Contractor shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

D. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, age, color, religion, gender, sexual orientation, national origin, military or veteran status, or disability unrelated to job performance. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, age, color, religion, gender, sexual orientation, national origin, military or veteran status, or disability unrelated to job performance. This action shall include, but not be limited to, the following:

(a) employment, upgrading, demotion, or transfer;

(b) recruitment or recruitment advertising;

(c) layoff or termination;

(d) rates of pay or other forms of compensation; and

(e) selection for training, including apprenticeship.

(2) The Contractor agrees to post in conspicuous places, available to employees and applicants, notices to be provided by the City setting forth the provisions of the nondiscrimination clause described in Subsection (1) of this section.

(3) The Contractor agrees to, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that every qualified applicant will receive consideration for employment without regard to race, age, color, religion, gender, sexual orientation, national origin, military or veteran status, or disability unrelated to job performance.

(4) The Contractor agrees to furnish all information and reports required by the City Manager and shall permit the city manager to investigate the Contractor's payrolls and personnel records that pertain to current contracts with the City for purposes of ascertaining compliance with this equal employment clause.

(5) The Contractor agrees to file compliance reports with the City as may be required by the City Manager. Compliance reports must:

(a) be filed within the required time period;

(b) contain information as to the employment practices, policies, programs, and statistics of the Contractor; and

(c) be in the form that the City Manager prescribes.

(6) If the Contractor fails to comply with this equal employment opportunity clause, the Contractor agrees that the City, at its option, may do either or both of the following:

(a) Cancel, terminate, or suspend the contract in whole or in part.

(b) Declare the Contractor ineligible for further City contracts until the Contractor is determined to be in compliance.

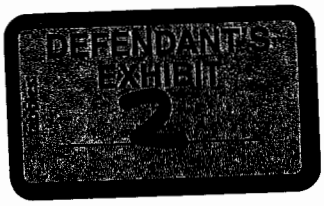
(7) Nothing in this equal employment opportunity clause requires that employee benefits be provided to an employee for the benefit of the employee's domestic partner.

EXHIBIT 2

Public Works Construction Standards

North Central Texas

October 2004



North Central Texas Council of Governments

616 Six Flags Drive, Suite 200
P. O. 5888
Arlington, Texas 76005-5888
(817) 640-3300

ITEM 101. DEFINITIONS AND ABBREVIATIONS

101.1 DEFINITIONS

The following words and expressions, or pronouns used in their place, shall wherever they appear in this Contract be construed as follows, unless a different meaning is clear from the context:

Approved, Directed, Required, and Words of Like Import: Whenever they apply to the work or its performance, the words "directed," "required," "permitted," "ordered," "designated," "established," "prescribed" and words of like import used in the contract, specifications or upon the drawings shall imply the direction, requirement, permission, order, designation or prescription of the OWNER; and "approved," "acceptable," "satisfactory" and words of like import shall mean approved by, acceptable to or satisfactory to the OWNER.

Addendum, Bulletin or Letter of Clarification: Any additional contract provisions, or change, revisions or clarification of the contract documents issued in writing by the OWNER, to prospective bidders prior to the receipt of bids.

Backfill: embedment and final backfill

Base: a layer of specified material of plan thickness placed immediately below the pavement course surfacing.

Bedding: material upon which a pipe rests.

Bulletin: see Addendum.

Change Order: A written order to the CONTRACTOR authorizing and directing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or the contract time.

Contract or Contract Documents: Contract documents are all of the written, printed, typed and drawn instruments that comprise and govern the performance of the contract as defined herein. The contract and contract documents include the advertisement, instructions to bidders, proposal, addendum, specifications, including the general, special and technical conditions, provisions, plans or working drawings — and any supplemental changes or agreements pertaining to the work or materials therefore; and bonds and any additional documents incorporated by reference in the above.

Contract Price: The total monies payable to the CONTRACTOR under the terms and conditions of the contract documents. When used in such context, it may also mean the unit price of an item of work under the contract terms.

Contract Work: Everything expressly or impliedly required to be furnished and done by the CONTRACTOR by any one or more parts of the contract documents, except "extra work" as hereinafter defined; it being understood that, in case of any inconsistency between any part or parts of this Contract, the OWNER shall determine which shall prevail in accordance with Item 105.1. Contract Documents hereof.

CONTRACTOR: The person, persons, partnership, firm, corporation, association or organization, or any combination thereof, as an independent contractor entering into the contract for the execution of the work, acting directly or through a duly authorized representative.

Other CONTRACTORS: Any contractor, other than the CONTRACTOR or its subcontractors, who has a direct contact with the OWNER for work on or adjacent to the site of the work.

Day or Days: Any successive days of the week or month, no days being excepted. It shall be taken to mean the same as a normal calendar day.

Drawings or Contract Drawings: Only those drawings specifically entitled as such and as specified in the contract, or in any bulletin, or any detailed drawing furnished by the OWNER, pertaining or supplemental thereto.

Embedment: bedding and initial backfill.

Engineer: The Engineer or its duly authorized representative means the Engineer of the OWNER.

Equal: Materials, articles or methods which are of equal or higher quality than those specified or shown on the drawings and as further defined in Item 106.1. Substitution of Materials, as determined by the Engineer in his or her sole discretion.

Extra Work: Work other than that which is expressly or impliedly required by the Contract documents at the time of the execution of the Contract.

Final backfill: material required to fill the trench from the top of the initial backfill to ground elevation or subgrade of a street.

Initial backfill: material that covers the wastewater collection system and water lines.

Inspector: Any representative of the OWNER designated to inspect the work.

Letter of Clarification: see Addendum.

ITEM 103. AWARD AND EXECUTION OF CONTRACT

103.1. CONTRACTOR'S WARRANTIES AND UNDERSTANDING

In consideration of, and to induce the award of this Contract to it, the CONTRACTOR represents and warrants:

(1) that it is financially solvent, and sufficiently experienced and competent to perform the work;
(2) that the facts stated in the proposal and the information given by it pursuant to the bidding documents are true and correct in all respects;
(3) that it has read, understood and complied with all the requirements set forth in the bidding documents;
(4) that it is familiar with and understands all laws and regulations applicable to the work; and
(5) unless otherwise specifically provided for in the Contract documents, the CONTRACTOR shall do all the work and shall furnish all the tools, equipment, machinery, materials, labor and appliances, except as herein otherwise specified, necessary or proper for performing and completing the work required by this Contract, in the manner and within the time herein prescribed.

By executing the Contract, the CONTRACTOR represents that it has visited the site of work, has fully familiarized itself with the local and on-site conditions under which the work is to be performed and has correlated its observation with the requirements of the Contract documents. In addition, the CONTRACTOR represents that it has satisfied itself as to subsurface conditions at the site of the work. Information, data and representations contained in the Contract documents pertaining to the conditions at the site, including subsurface conditions, are for information only and are not warranted or represented in any manner to accurately show the conditions at the site of the work. The CONTRACTOR agrees that it shall make no claims for damages; additional compensation or extension of time against the OWNER because of encountering actual conditions in the course of the work, which vary or differ from conditions or information, contained in the Contract documents. Except as provided in Item 107.23. Existing Structures, Facilities and Appurtenances, all risks of differing subsurface conditions shall be borne solely by the CONTRACTOR.

103.2. AWARD OF CONTRACT

The OWNER will attempt to award the Contract within 90 days after the opening of proposals. The award, if made, shall be to the lowest responsible bidder; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the Contract. If awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 days after receipt of the awarded Contract.

103.3. SURETY BONDS

103.3.1. CONTRACTOR Surety Bonds. With the execution and delivery of the Contract, the CONTRACTOR shall furnish and file with the OWNER in the amounts herein required, the surety bonds specified hereunder. Without exception, the OWNER'S bond forms must be used, and exclusive venue for any lawsuit in connection with such bonds shall be specified as the county in which the OWNER'S principal office is located. Such surety bonds shall be in accordance with the provisions of Texas Government Code, Chapter 2253, as amended, and Article 7.19-1 of the Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price with or without notice to the surety, but in no event shall a change which reduces the Contract amount reduce the penal amount of such bonds. If performance and payment bond forms are included in the bid documents, these forms shall be used with this Contract.

103.3.1.1. Performance Bond. A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or, conditioned on the faithful performance of the work in accordance with the plans, specifications and Contract documents, including performance of any guarantees or warranties required by OWNER, and including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the improvement by the OWNER or such lesser or greater period as may be designated in the Contract documents.

103.3.1.2. Payment Bond. A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime CONTRACTOR or a subcontractor to supply public work labor or material.

103.3.1.3. Additional or Substitute Bonds. If at any time the OWNER is or becomes dissatisfied with any surety on a performance or payment bond, the CONTRACTOR shall, within five days after notice from the OWNER to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed

ITEM 104. SCOPE OF WORK

104.1. INTENT OF CONTRACT DOCUMENTS

The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the CONTRACTOR undertakes to do in full compliance with the Contract documents. It is not intended to mention every item of work in the specifications that can be adequately shown on the drawings nor to show on the drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings or reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the CONTRACTOR whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions or obligations contained in the Contract documents.

104.2. CHANGE OR MODIFICATION OF CONTRACT

104.2.1. Increased or Decreased Quantities of Work. The OWNER reserves the right to make changes in the quantities of the work, as may be considered necessary or desirable, and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or bonds. The CONTRACTOR shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

The OWNER reserves the right to decrease the work under this Contract. Payment to the CONTRACTOR for the Contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the Contract, except as provided below.

When the quantity of work to be done or of materials to be furnished under any major item of the Contract is more than 125 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the portion of work above 125 percent of the quantity stated in the Contract.

When the quantity of work to be done or of materials to be furnished under any major item of the Contract is less than 75 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the work performed.

Any revised consideration shall be paid for as is hereinafter provided under Item 109.3. Payment for Extra Work. The foregoing notwithstanding, the total original Contract amount shall not be increased more than 25 percent; the CONTRACTOR, by submission of a bid and execution of the Contract, is deemed to consent to the OWNER's right to reduce the total original Contract amount by more than 25 percent.

104.2.2. Alteration of Plans and Specifications. The OWNER reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract and bonds. Such changes shall be issued by the Engineer.

104.2.3. Extra Work. When any work is necessary to the proper completion of the project and for which no prices are provided for in the proposal and Contract, the CONTRACTOR shall do such work, but only when and as ordered in writing by the Engineer. Extra Work is further explained in Item 109.3. Payment for Extra Work and Item 104.3. Disputed Work and Claims for Additional Compensation. Payment for Extra Work shall be made as hereinafter provided in Item 109.3. Payment for Extra Work.

104.2.4 Finality of Change Orders. In addition to the OWNER, the CONTRACTOR shall sign the Change Order Documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the CONTRACTOR to sign a Change Order shall not relieve the CONTRACTOR of its obligation to execute the proposed changes in accordance with this Item and the other terms and provisions of this Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.

104.2.5 General Claim Procedures. Except where otherwise provided in the Contract Documents, claims by the CONTRACTOR, whether for damages, additional compensation, additional time or other reasons must be made by written notice to the OWNER within fourteen days after occurrence of the event or events giving rise to the particular claim. Every claim, whether for damages, additional compensation, additional time or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the

company authorized to bind the CONTRACTOR by his or her signature) of the CONTRACTOR, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by the CONTRACTOR. The CONTRACTOR shall be deemed to have waived any claim not made strictly in accordance with the procedure and time limits set out in this paragraph.

104.3. DISPUTED WORK AND CLAIMS FOR ADDITIONAL COMPENSATION

If the CONTRACTOR is of the opinion that:

(1) certain work necessary or required to accomplish the result intended by this Contract or certain work ordered to be done as contract work by the OWNER is actually Extra Work and not CONTRACTOR work, or

(2) any determination or order of the OWNER violates the terms and provisions of this Contract,

then the CONTRACTOR shall promptly, either before proceeding with such work or complying with such order or determination, notify the OWNER in writing of its contentions with respect thereto and request a final determination by the OWNER. Such determination of the OWNER shall be given in writing to the CONTRACTOR. If the OWNER determines that the work in question is Extra Work and not Contract work, or that the order complained of requires performance by the CONTRACTOR beyond that required by the Contract or violates the terms and provisions of the Contract, thereupon the OWNER shall cause either (a) the issuance of a written order covering the Extra Work as provided for in Item 104.2. Change or Modification of Contract hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the Contract.

If the OWNER determines that the work in question is Contract work and not Extra Work, or that the determination or order complained of does not require performance by the CONTRACTOR beyond that required by the Contract or violate the terms and provisions of the Contract, the OWNER shall direct the CONTRACTOR to proceed, and the CONTRACTOR must promptly comply. In order to reserve its right to claim compensation for such work resulting from such compliance, however, the CONTRACTOR must, within fourteen (14) days after receiving the OWNER'S determination and direction, notify the OWNER in writing that the work is being performed, or that the determination and direction is being complied with, under protest. If the OWNER is properly notified of a protest by the CONTRACTOR, then the cost of such disputed work shall be accounted for in accordance with the force account method described in Item 109.3.3. Force Account Work. Payment, if any is due, shall be made when the OWNER makes a final determination regarding the merit of the CONTRACTOR's protest. The final determination of the cost of disputed work under this method, or of any issue regarding the merits of a protest, is not waived by the OWNER'S issuance of any Change Order providing for the funding of the disputed work.

If the CONTRACTOR fails to so appeal to the OWNER for a determination or, having so appealed, should the CONTRACTOR thus fail to notify the OWNER in writing of its protest, the CONTRACTOR shall be deemed to have waived any claim for extra compensation of damages therefore. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the CONTRACTOR due to a court order against the OWNER, or due to the OWNER'S failure to secure right-of-way at the time required or because of a conflict of a utility with the work, shall not be cause for additional compensation for damages sustained by the CONTRACTOR, but may be a cause for extension of Contract working time only.

In addition to the foregoing requirements, the CONTRACTOR shall, upon notice from the OWNER, produce for examination and audit at the CONTRACTOR'S office, by the representatives of the OWNER, all its books and records showing all of its acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the CONTRACTOR may be present.

Unless the aforesaid requirements and conditions shall have been complied with by the CONTRACTOR, the OWNER shall be released from all claims arising under, relating to or by reason of this Contract, except for the sums to be due under the payment provisions of this Contract. It is further stipulated and agreed that no conduct on the part of the OWNER or any agent or employee of the OWNER shall ever be construed as a waiver of the requirements of this section, when such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the Contract documents; and in any action against the OWNER to recover any sum in excess of the Contract amount, the CONTRACTOR must allege and prove strict compliance with the provisions of this section.

In connection with the examination provided for herein, the OWNER, upon demand therefore, shall also produce for inspection by the CONTRACTOR such records as the OWNER may have with respect to such disputed work or work performed under protest pursuant to order of the OWNER, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the CONTRACTOR'S claim.

104.4. PERFORMANCE OF EXTRA OR DISPUTED WORK

While the CONTRACTOR or any subcontractor is performing Extra Work in accordance with Item 109.3.3. Force Account Work or is performing disputed work or complying with a determination or order under protest in accordance with Item 104.3. Disputed Work and Claims for Additional Compensation (the cost of which shall also be determined by the method set out in Item 109.3.3. Force Account Work), the CONTRACTOR shall daily furnish the Engineer or other representative of the OWNER at the project site with three copies of verified statements showing:

(1) the name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on Extra Work or engaged in complying with such determination or order, the character of Extra Work each is doing and the wages paid to him or her, including the rate and amount of payroll taxes, contribution for insurance and federal social security; and

(2) the nature, cost and quantity of any materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of the Extra Work or in complying with such determination or order, and from whom purchased or rented.

The above required submittals are in addition to and not in lieu of submittals required under Item 104.3. Disputed Work and Claims for Additional Compensation and Item 109.3. Payment for Extra Work. A copy of such statements shall be signed by the OWNER'S representative, noting thereon any items in question, and shall be returned to the CONTRACTOR within two working days after submission. This signature shall not be construed as the OWNER'S agreement and acceptance of items not questioned since all items are subject to subsequent review and audit by OWNER representatives.

The CONTRACTOR and its subcontractors, when required by the OWNER, must also produce for inspection and audit by designated OWNER representatives, any and all of their books, vouchers, records, daily job diaries and reports, canceled checks, etc. showing the nature and quantity of labor, materials and equipment actually used in the performance of the Extra Work; the amounts expended therefore; and the costs incurred for insurance premiums and other items of expense directly chargeable to such Extra Work. The CONTRACTOR must permit the OWNER'S representatives to make extracts there from or copies thereof as may be desired.

Failure of the CONTRACTOR to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation on account of the performance of such Extra Work.

All rights-of-way and easements shown on the plans for construction will be provided by the OWNER. If private property is leased or occupied by the CONTRACTOR for use in conjunction with the Work, the CONTRACTOR shall provide to the OWNER, in writing prior to final acceptance of the Work, a release of the CONTRACTOR and OWNER from any and all claims the private property owner has or may have as a result of the CONTRACTOR's use of the private property during the course of the Work. The release shall be signed by the private property owner or the private property owner's agent.

107.22. RAILWAY CROSSINGS

Where the work encroaches upon any right-of-way of any railway, the OWNER shall secure the necessary easement for the work. Where railway tracks are to be crossed, the CONTRACTOR shall observe all the regulations and instructions of the railway company as to methods of doing the work or precautions for safety of property and the public. All negotiations with the railway company, except for right-of-way, shall be made by the CONTRACTOR. The railway company shall be notified by the CONTRACTOR not less than five days prior to commencing the work. The CONTRACTOR shall not be paid separate compensation for such railway crossing but shall receive only the compensation as set out in the proposal.

Prior to crossing or working on Railroad Right-of-Way, the CONTRACTOR will be required to contact the railroad company, or companies, and to execute CONTRACTOR's Agreements as may be required by each railroad company involved. No work shall be permitted where railroads are involved until the Engineer is furnished sufficient correspondence from the railroad company involved to ascertain that either the agreement has been executed and a certified copy of the insurance policy furnished, or that no such action is required.

107.23. EXISTING STRUCTURES, FACILITIES AND APPURTENANCES

107.23.1. General. This Item 107.23. addresses only matters arising from certain existing, man-made surface and subsurface structures, facilities and appurtenances, not naturally occurring conditions. **AS PROVIDED IN ITEM 103.1. CONTRACTOR'S WARRANTIES AND UNDERSTANDING, THE OWNER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM ARISING FROM A DIFFERING, NATURALLY OCCURRING SURFACE OR SUBSURFACE CONDITION, OR FROM ANY MAN-MADE CONDITION THAT IS NOT A SURFACE OR SUBSURFACE STRUCTURE, FACILITY OR APPURTENANCE.** The OWNER's responsibility for any claim arising from existing, man-made surface and subsurface structures, facilities and appurtenances is governed solely by this Item 107.23., and any situation involving a differing subsurface condition not included herein shall be governed solely by Item 103.1. Contractor's Warranties and Understanding.

107.23.2. Showing Locations. The plans show the general locations of all known, existing man-made surface and subsurface structures, facilities and appurtenances. The locations of many gas mains, water and wastewater mains, storm sewers, drains, culverts, conduits and other man-made utility structures, facilities and appurtenances, however, are unknown. **THE OWNER DOES NOT WARRANT THE PLANS TO SHOW THE EXACT LOCATIONS OF ANY AND ALL KNOWN, EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES, AND DOES NOT WARRANT THAT IT KNOWS OF THE EXISTENCE OF ALL POSSIBLE EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES.** The OWNER assumes no responsibility, except as provided below, for any failure to show any or all of these structures on the plans or to show them in their exact locations.

Wherever the OWNER has caused certain test borings to be made on the site, or when any information pertaining to the character or depth of materials is found from observations, records or otherwise, such information revealed thereby may be indicated on the plans. The action of the OWNER in revealing such information shall not in any manner be construed as a warranty on the part of the OWNER of the exact nature of the subsurface conditions that shall be encountered during construction of the work. Although the information is shown as accurately as possible, the OWNER does not guarantee that any materials to be encountered at any point or points are even approximately the same, either in character or elevations, as those shown on the plans. The information thus furnished by the OWNER is intended only as a guide to the CONTRACTOR's own investigations preliminary to submitting a bid for the work.

107.23.3. Conditions for Increases to Work or Payment. The CONTRACTOR and OWNER mutually, expressly agree that the failure of the OWNER to show any existing, man-made surface or subsurface structure, facility or appurtenance on the plans, or the failure to show them on the plans in their exact locations, shall not be considered as a basis of a claim for Extra Work, damages or other compensation of any kind, nor shall it be considered as a basis for increasing the quantities of work or unit prices on any bid item, unless:

(1) The CONTRACTOR could not have discovered the existing, man-made surface or subsurface structure, facility or appurtenance by a reasonable review of the plans and specifications and a reasonable, careful inspection of the work site prior to bid opening or award of the Contract; and

108.11.8. No Limitation of Rights. Nothing contained in this section shall limit or alter the rights, which the OWNER may have for termination of this Contract under Item 108.9. CONTRACTOR Default; OWNER'S Right to Suspend Work and Annual Contract or any other right which OWNER may have for default or breach of Contract by CONTRACTOR.

108.12. CLAIMS AGAINST OWNER AND ACTION THEREON

No claim against the OWNER under the Contract or for breach of the Contract or additional compensation for extra or disputed work shall be made or asserted against the OWNER under the Contract or in any court action except pursuant to the provisions of Item 109.3. Payment for Extra Work, Item 104.3. Disputed Work and Claims for Additional Compensation, and Item 104.4. Performance of Extra or Disputed Work, and unless the CONTRACTOR shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections.

108.13. USE OF COMPLETED PORTIONS OF WORK

The OWNER may, after written notice to the CONTRACTOR, and without incurring any liability for increased compensation to the CONTRACTOR, take over and use any completed portion of the work prior to the final completion and acceptance of the entire work included in the Contract, and notwithstanding that the time allowed for final completion has not expired. The CONTRACTOR shall not object to, nor interfere in any way with, such occupancy or use after receipt of the OWNER'S written notice.

Immediately prior to such occupancy and use, the OWNER shall inspect such portion of the work to be taken over and shall furnish the CONTRACTOR a written statement of the work, if any, still to be done on such part. The CONTRACTOR shall promptly thereafter complete such unfinished work to permit occupancy and use on the date specified in the OWNER'S written order, unless the OWNER shall permit specific items of work to be finished after the occupancy and use by the OWNER.

The provisions in the last two paragraphs above shall not apply to portions of roads, streets, bridges or detours upon which traffic is diverted to enable the continuation of the Contract work.

Neither such usage, as performed under this section, nor the written statement of work still to be done shall be held in any way an acceptance of said work or structure or any part thereof, nor as a waiver of any of the provisions of these specifications or other Contract Documents pending final completion and acceptance of the work; all necessary repairs and removals of any section of the work so put into use, due to the defective materials or workmanship or to operations of the CONTRACTOR, shall be performed by the CONTRACTOR at its own expense.

In the event the CONTRACTOR is unreasonably delayed by the OWNER exercising its rights under this section, the CONTRACTOR may submit a request for an extension of time under Item 108.8. Delays; Extension of Time; Liquidated Damages; no additional compensation or delay damages will be paid.

ITEM 109. MEASUREMENT AND PAYMENT

109.1. PAYMENT FOR LABOR AND MATERIAL; NO LIENS

The CONTRACTOR shall furnish payrolls and personnel records, which pertain to current construction contracts with the OWNER for the purpose of ascertaining compliance with minimum wage rates published by the OWNER. Monthly and final estimates for payment will not be processed unless the CONTRACTOR complies with this requirement in a timely manner.

The CONTRACTOR for itself or any of its subcontractors shall pay all indebtedness, which may become due to any person, firm or corporation having furnished labor, material or both in the performance of this Contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this Contract, to protect its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this Contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any subcontractor shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work. However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

109.2. PAYMENT FOR MATERIALS

109.2.1. Materials On-Hand. Materials purchased and stored more than 30 days before use shall be considered materials on-hand. Payment for such materials shall be made as materials are consumed, according to Item 109.5. Monthly Estimate, Partial Payments, Retainage, Final Inspection, Acceptance and Final Payment.

109.2.2. Materials Stored Off-Site. Off-site storage of such materials and payment for off-site storage shall be accomplished according to Item 106.4. Off-Site Storage.

109.3. PAYMENT FOR EXTRA WORK

109.3.1. General. Extra Work done by the CONTRACTOR, as authorized and approved by the OWNER, shall be compensated for in the manner described in this Item 109.3. The compensation provided for Extra Work done constitutes full and final payment for the cost of the Extra Work, which cost is limited to: (1) all reasonable costs of labor, materials, supplies, tools, equipment or machinery rental, power, fuel, lubricants, water and other similar operation expenses (but only for the time that such of the above things are employed or used on such Extra Work) incurred in the performance of the Extra Work, and a ratable proportion of premium expenses for all bonds and insurance required under the Contract, to the extent that the Extra Work would cause an increase in such bond or insurance premiums; and (2) a markup amount of not-to-exceed 15-percent of the above mentioned costs to cover and compensate the CONTRACTOR for profit, overhead, profit-and-overhead markups charged to CONTRACTOR by other subcontractors and suppliers, general supervision, field office expense and all other elements of cost and expense not embraced within the cost of the Extra Work as described in this Item 109.3.1. General. No cost of off-site storage shall be included in the above description of cost unless off-site storage has been approved and directed by the OWNER in writing. No other claims or reservations of right as to additional costs, prices, markups, costs not permitted to be included under this paragraph, disallowed costs or other future additional money or time shall be accepted; each change order shall be specific and final as described in Item 104.2.4 Finality of Change Orders.

109.3.2. Method of Determination. The method of determination and payment of cost, or credit to the OWNER, for any Extra Work shall be one of the following:

(1) Unit prices agreed on in writing by the Engineer and approved by the OWNER and executed by the OWNER and CONTRACTOR before the Extra Work is commenced, or unit prices already included in the Contract documents, subject to all other conditions of the Contract. Mutual acceptance of a not-to-exceed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation before the Extra Work is commenced, subject to all other conditions of the Contract.

(2) A not-to-exceed cost to be determined in a manner agreed upon by the parties plus a mutually acceptable fixed or percentage fee, agreed upon before the Extra Work is commenced and subject to all other conditions of the Contract.

(3) The force account method provided in Item 109.3.3. Force Account Work.

109.3.3. Force Account Work. If the CONTRACTOR and the OWNER cannot agree to one of the methods of calculating cost provided in Item 109.3.2. Method of Determination above, or if the parties agree to a method but

cannot agree to a final dollar figure, or if the CONTRACTOR for whatever reason fails or refuses to sign the Change Order in question, the CONTRACTOR, provided it receives a written order signed by the OWNER, shall promptly proceed with the work involved. Nothing in this paragraph shall be construed to relieve the CONTRACTOR of any obligations it has under the disputed work provisions of Item 104.3. Disputed Work and Claims for Additional Compensation, and Item 104.4. Performance of Extra or Disputed Work, and where applicable the CONTRACTOR is still obligated to abide with those Items as well as this Item 109.3.3. Force Account Work. The cost of the work involved shall then be calculated on a force account basis, on the basis of the actual, reasonable field cost of the work attributable to the changes, plus a reasonable allowance for overhead, profit, markups of other subcontractors and suppliers, general supervision, field office expense and other elements of cost not embraced within the actual field cost as specified herein, such allowance in any case never to exceed 15%. In such case, the CONTRACTOR shall keep a detailed itemized account of the work involved and the actual field cost incurred, in a format acceptable to the Engineer and with such appropriate supporting data as the Engineer and the OWNER may prescribe. Sworn copies of the itemized accounting shall be directed to the Engineer each day during the performance of the force account work. Failure of the CONTRACTOR to submit the sworn-to itemized accounting daily as required herein shall constitute a waiver by the CONTRACTOR of any right to dispute the OWNER'S determination of the amount due the CONTRACTOR for force account work.

Actual, reasonable field cost of the work to be charged under this Item 109.3.3. Force Account Work for force account work is limited to the following:

(1) The reasonable wages of all workmen, foremen, timekeepers, mechanics and laborers, plus costs of social security, old age and unemployment insurance, fringe benefits required by agreement or custom (excluding employee or executive bonuses), and worker's compensation insurance, for the time such labor is actually employed or used on force account work.
(2) Reasonable costs of materials, tools, supplies and equipment (but not to include off-site storage unless so approved and directed in writing by the OWNER), whether incorporated or consumed into the force account work.
(3) Reasonable rental costs of machinery and equipment, exclusive of hand tools, only for the time actually employed or used on force account work, whether rented from the CONTRACTOR or others.
(4) A pro rata portion of premium expenses for all bonds and insurance to the extent force account work would cause an increase in such bond or insurance premiums.

Pending final determination of the cost to the OWNER, payment of undisputed amounts on force account shall be included on the monthly estimate as work is completed unless otherwise expressly provided in the written order signed by the OWNER to perform the work. Nothing in this Item 109.3.3. Force Account Work shall be construed as directing the CONTRACTOR's means and methods of performing the work in question.

109.3.4. Distinguishing Extra Work. For purposes of this Item or any other provision of the Contract documents that allows a claim for Extra Work, the term "Extra Work" means work that is not reasonably within the scope of the Contract Documents and not otherwise incidental or necessary to performance of the Contract. The term does not include any change by the CONTRACTOR in the means and methods of performing the Work from that anticipated or bid (even if such change in means or methods is requested or directed by the OWNER), whether or not the change is due to foreseeable or unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. The OWNER shall not be liable for any claim due to a change in the means or methods of construction by the CONTRACTOR, resulting in additional costs, if the OWNER has not changed the plans or specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract Documents remains the same. The OWNER shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be completed, notwithstanding that the CONTRACTOR did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost the CONTRACTOR more to complete the Contract work than the original Contract price.

109.4. PAYMENT WITHHELD

In addition to express provisions elsewhere contained in the Contract, the OWNER may withhold from any payment otherwise due the CONTRACTOR such amount as determined necessary to protect the OWNER'S interest, or, if it so elects, may withhold or retain all or a portion of any payment or refund payment on account of:

(1) unsatisfactory progress of the work not caused by conditions beyond the CONTRACTOR'S control,
(2) defective work not corrected,
(3) CONTRACTOR'S failure to carry out instructions or orders of the OWNER or its representative,
(4) a reasonable doubt that the Contract can be completed for the balance then unpaid,
(5) work or execution thereof not in accordance with the Contract documents,

(6) claim filed by or against the CONTRACTOR or reasonable evidence indicating probable filing of claims,
(7) failure of the CONTRACTOR to make payments to any subcontractor or suppliers for material or labor used in the performance of the Work,
(8) damage to another CONTRACTOR,
(9) unsafe working conditions allowed to persist by the CONTRACTOR,
(10) failure of the CONTRACTOR to provide work schedules as required by the OWNER,
(11) use of subcontractors without the Engineer's approval or
(12) failure of the CONTRACTOR to keep current as-built record drawings at the job site or to turn same over in completed form to the OWNER.

When the grounds for withholding payment are removed, payment shall be made for amounts withheld because of them, and OWNER shall never be liable for interest on any delayed or late payment.

109.5. MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENT

109.5.1. Monthly Estimate. Between the 25th day and the last day of each month, the OWNER shall make an approximate estimate of the value of the work done during the month under the specifications. Whenever the said estimate or estimates of work done since the last previous estimate exceeds $100 in amount, a percentage of such estimate sum shall be paid the CONTRACTOR on or before the 15th day of the month next following. The monthly estimate may include acceptable nonperishable materials delivered to the work; such payment shall be allowed on the same percentage basis of the net invoice value as provided hereinafter. The percent retained by the owner shall normally be up to 10 percent at completion, unless otherwise stated. At the midpoint, or at any subsequent time, if the owner determines that the progress on the Contract is satisfactory in all respects, it may at its discretion cease to retain additional funds until the completion of the project, or until progress ceases to be satisfactory. The owner shall make the sole determination in this matter.

Except as otherwise provided by the Contract, between the 25th day and the last day of each month the CONTRACTOR shall make an estimate of the value of the work done during the month under the specifications. The CONTRACTOR shall prepare the estimate on a form approved by the Engineer. The CONTRACTOR shall forward the estimate required above to the OWNER by not later than the last day of the month. The monthly estimate may include acceptable nonperishable materials delivered to and stored at the work site or a storage facility accessible to the OWNER; payment for such stored materials shall be allowed on the same percentage basis of the value as provided hereinafter. The monthly estimate shall also provide such supporting documentation as the Engineer or the other applicable provisions of the specifications may require. The OWNER shall verify that the CONTRACTOR'S estimate matches the total value of work done and acceptable non-perishable materials delivered to the work site or storage facility, based upon the bid proposal prices and quantities measured or verified by OWNER. In the event of a discrepancy between quantities of work as shown in the CONTRACTOR'S estimate and measured quantities as shown in the OWNER'S verification, the OWNER'S determination or measurement shall be final, and the CONTRACTOR'S estimate shall be adjusted to reflect the quantities of work as shown by the OWNER'S verification. Payment shall be made by OWNER about thirty (30) days after receipt of the estimate from CONTRACTOR. OWNER shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any discrepancy in quantities as described above, any failure to provide supporting documentation or other information required with the estimate or as a precondition to payment under the Contract, or due to any payment the OWNER has a right to withhold under the Contract.

The CONTRACTOR shall submit to the Engineer a Schedule of Values for each Lump Sum item of work for review and approval 20 days before the work is scheduled to be performed. The CONTRACTOR shall itemize in the Schedule of Values the actual costs to the CONTRACTOR to perform the various parts of the Lump Sum item work which shall include a reasonable overhead and profit cost item. Partial payment for Lump Sum items shall be made based on the value and percentage of the work in the bid item completed, as approved by the OWNER and as reflected in the Schedule of Values.

The CONTRACTOR shall furnish to the OWNER such detailed information as OWNER may request to assist in the preparation of monthly estimates. It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the OWNER of the amount of work done or of its quality or sufficiency nor as an acceptance of the work or the release of the CONTRACTOR of any of its responsibility under the Contract.

109.5.2. Retainage. As security for the faithful completion of the work by the CONTRACTOR, the OWNER shall retain 15-percent of the total dollar amount of work done on all contracts $25,000.00 and less; 10-percent of the total dollar amount of work done on all contracts in excess of $25,000.00 and less than $400,000.00; five-percent

of the total dollar amount of work done on all contracts of $400,000.00 or more. On all contracts in excess of $400,000, the following shall apply:

(1) on all contracts in excess when work progress is 80-percent complete, retainage may, at the OWNER'S option, be reduced to two percent of the dollar value of all work satisfactorily completed to date (not to include material on hand), provided that the CONTRACTOR is making satisfactory progress and there is no cause of greater retainage as determined by the Engineer;

(2) when work progress is substantially complete, the retainage may be further reduced to only that amount necessary to assure completion as determined by the Engineer;

(3) if the OWNER determines that the CONTRACTOR is not making satisfactory progress or if there is other specific cause, the OWNER may, at its discretion, reinstate up to the five percent retainage.

109.5.3. Final Inspection and Acceptance. Final inspections and acceptance shall proceed according to Item 105.9. Inspection and Item 105.10. Acceptance.

109.5.4. Final Payment. Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, as evidenced in the certificate of acceptance obtained according to Item 105.10. Acceptance, and all required submissions provided to the OWNER, a final estimate showing the value of the work shall be prepared by the Engineer as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of the final estimate, less any sums that have been previously paid, deducted or retained under the provisions of this Contract, shall be paid to the CONTRACTOR within a reasonable period of time after final acceptance, provided that the CONTRACTOR has first furnished the OWNER:

(1) a consent of surety to final payment;

(2) the final CONTRACTOR'S Report of Subcontractor/Supplier Payment, evidencing that all indebtness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment; and

(3) such other affidavits, lien waivers and other documentation as the OWNER may reasonably require to protect its interests.

In addition, the CONTRACTOR shall be required to execute the OWNER'S standard Affidavit of Final Payment and Release as a precondition to receipt of final payment.

The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims or liabilities under the Contract, including all subcontractor claims, for anything done or furnished or relating to the work under the Contract or for any act or neglect of said OWNER relating to or connected with the Contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment or on the retainage.

109.6. WIRE TRANSFERS

Payments to the CONTRACTOR may, at the discretion of the OWNER, be made by wire transfer to a bank of the CONTRACTOR'S choice. The CONTRACTOR must furnish the following information:

(1) The ABA number of the bank.

(2) The CONTRACTOR'S account number.

The request must be on the CONTRACTOR'S letterhead and signed by an authorized representative of the CONTRACTOR (cannot be a copy).

EXHIBIT 3

City of Dallas

2011 ADDENDUM

to the

Public Works Construction Standards - North Central Texas

As Published by the

North Central Texas Council of Governments

(Fourth Edition, October 2004)

October 1, 2011

The 2011 Addendum to the North Central Texas Council of Governments, Fourth Edition, © October, 2004, sets forth exceptions or requirements of the City of Dallas Water Utilities Department, the City of Dallas Park and Recreation Department, Trinity Watershed Management, and the City of Dallas Department of Public Works, and thereby takes precedence over any conditions or requirements of the Standard Specifications with which it may be in conflict.

dallas water utilities
city of dallas

THE TRINITY

City of Dallas

ITEM 107.COD: LEGAL RELATIONS AND CONTRACT RESPONSIBILITIES

(Page 107–2: Add the following:)

107.5.1.COD: COMPENSATION AND ACKNOWLEDGEMENT OF WORK: *The CONTRACTOR shall receive and accept compensation, as herein provided, as full payment for furnishing all labor, tools, material, equipment and incidentals; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work and before its final acceptance by the OWNER; for all risks of whatever description connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.*

(Page 107–3: Add the following:)

107.11.1.COD: COOPERATION OF THE CONTRACTOR: *The CONTRACTOR shall give to the work the consistent attention necessary to facilitate the progress thereof, and the CONTRACTOR shall cooperate with the OWNER, and with other CONTRACTORS in every way possible.*

The OWNER and the OWNER'S representatives shall at all times have free access to the work whenever it is in preparation or progress and the contractor shall provide safe, convenient and proper facilities for such access and inspection.

(Page 107-3.**Replace Item107.13.5. Reports,** with the following:)

107.13.5.COD: EQUAL EMPLOYMENT OPPORTUNITY REPORTING: *During the course of the work, the CONTRACTOR shall submit to the OWNER, on a monthly basis, a breakdown by minority group of all employees at the site of the work. The CONTRACTOR must submit to the OWNER on a monthly basis, a copy of each weekly payroll pertaining to his CONTRACT as follows:*

Dallas Water Utilities Contracts:

Capital Improvements Program
Project Manager
2121 Main St., Suite 300
Dallas, Texas 75201

Department of Public Works Contracts:

Department of Public Works
Construction Management
320 E. Jefferson, Room 312
Dallas, Texas 75203

For Park and Recreation Department

Park and Recreation Department
Program Manager
Planning and Design
Room 6FS
1500 Marilla
Dallas, Texas 75201

For Trinity Watershed Management

Trinity Watershed Management
Construction Management: Room 312
320. E. Jefferson
Dallas, Texas 75203

(Page 108-3. Replace Item 108.7.2. No Additional Compensation, with the following: (There is an additional Item 108.7.2.(4).COD.))

108.7.2.COD: NO ADDITIONAL COMPENSATION: No additional compensation shall be paid to the CONTRACTOR for any suspension under **Item 108.7.1.COD(6): Reasons for Suspension**, above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, or as a result of a designated Ozone Alert Period, it shall be entitled to:

(1) an equitable extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and

(2) the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the CONTRACT requirements, such costs, if any, to be determined on the basis set forth in **Item 109.3. Payment for Extra Work**, herein; and

(3) where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of **Item 109.3. Payment for Extra Work**; provided, however, no compensation shall be allowed if the equipment is moved to another construction project for the OWNER.

(4) where such temporary suspension is not due to the fault of the CONTRACTOR and is the result of a designated Ozone Alert Period, the CONTRACTOR shall be entitled to additional time as provided in (1) above, but is not entitled to additional compensation.

Other than the additional time and compensation stated above, CONTRACTOR shall not be entitled to any other time extension related to the suspension, nor any additional compensation in any way related to such suspension.

(Page 108-3. Replace Item 108.8. Delays; Extension Of Time; Liquidated Damages, with the following: (There is an added note concerning ozone alerts in the first paragraph and the last paragraph has been added.))

108.8.COD: DELAYS; EXTENSION OF TIME; LIQUIDATED DAMAGES:

The CONTRACTOR may be entitled to an extension of working time under this CONTRACT only when all details supporting the claims for such extension are submitted to the OWNER in writing by the CONTRACTOR within fourteen (14) days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. *The CONTRACTOR shall notify the OWNER immediately upon encountering any condition that the CONTRACTOR believes may cause a claim for a time extension.* In adjusting the CONTRACT time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials when orders for such supplies and materials were timely *made and materials are not available from other sources,* acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions, *ozone alerts as determined by the National Weather Bureau or other authorized agency,* or delays of SUBCONTRACTORS due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the CONTRACT should require work and materials in greater amounts or quantities than those set forth in the CONTRACT, requiring more time for completion than the anticipated time, then the CONTRACT time *may* be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

No adjustment of the CONTRACT time shall be made if, concurrently with the equitable cause for delay, hindrance, disruption, force majeure, impact, or interference, there existed a cause for delay due to the fault or negligence of the CONTRACTOR or CONTRACTOR'S agents, employees or SUBCONTRACTORS. Notwithstanding any other provisions of the CONTRACT Documents, including the General and Special Provisions, no adjustment shall be made to the CONTRACT price and the CONTRACTOR may not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in adjustment of the CONTRACT time, including but not limited to those caused in whole or in part by the acts, omissions, failures, negligence or fault of the OWNER, its officers, servants or employees. Notwithstanding any other provision of the CONTRACT documents, all claims for extension of time must be submitted in accordance with ***Item 108.8.COD: Delays; Extension of Time; Liquidated Damages****, and no act of the OWNER shall be deemed a waiver or entitlement of such extension.*

(k) Where applicable, a "Letter of Satisfaction" from a private Property OWNER indicating that the CONTRACTOR has restored the property to an acceptable condition and paid all applicable fees after the CONTRACTOR used the property for construction related activities.

(Page 109-4. Replace **Item 109.5.4. Final Payment,** with the following: The last two sentences have been deleted and a new paragraph has been added at the end.)

109.5.4.COD: FINAL PAYMENT – DALLAS WATER UTILITIES AND DEPARTMENT OF PUBLIC WORKS: Whenever the improvements provided for by the CONTRACT shall have been completely performed on the part of the CONTRACTOR, as evidenced in the certificate of acceptance obtained according to **Item 105.10. Acceptance,** and all required submissions are provided to the OWNER, a final estimate showing the value of the work shall be prepared by the *OWNER* as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of the final estimate, less any sums that have been previously paid, deducted or retained under the provisions of this CONTRACT, shall be paid to the CONTRACTOR within a reasonable period of time after final acceptance, provided that the CONTRACTOR has first furnished the OWNER a consent of surety to final payment;

109.5.4.1.COD: FINAL CONTRACTOR'S REPORT: The final CONTRACTOR'S Report of SUBCONTRACTOR / SUPPLIER Payment, evidencing that all indebtness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment; and

109.5.4.2.COD: OTHER DOCUMENTATION: The OWNER may reasonably require other documentation, including but not limited to, additional affidavits, lien waivers, and other such documentation needed to protect the OWNER'S interest.

In addition, the CONTRACTOR shall be required to execute the OWNER'S standard Affidavit of Final Payment and Release as a precondition to receipt of final payment.

The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims or liabilities under the CONTRACT, including all SUBCONTRACTOR claims, for anything done or furnished or relating to the work under the CONTRACT or for any act or neglect of said OWNER relating to or connected with the CONTRACT.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment or on the retainage.

The CONTRACTOR will be evaluated by the OWNER. An example of the evaluation form is available at:

For Department of Public Works Contracts:

320 E. Jefferson.
Room 312
Dallas, Texas 75203

For Dallas Water Utilities Contracts:

2121 Main Street
Suite 300
Dallas, Texas 75201

For Park and Recreation Department

Park and Recreation Department
Program Manager
Planning and Design
Room 6FS
1500 Marilla
Dallas, Texas 75201

For Trinity Watershed Management Construction

Trinity Watershed Management
Construction Management: Room 312
320. E. Jefferson
Dallas, Texas 75203

EXHIBIT 4

SPECIAL PROVISIONS

AND

PROPOSAL FOR

SIMPKINS REMEDIATION – VEGETATIVE SUPPORT LAYER (PBSWM007)

AND FOR

DALLAS WATER UTILITIES
CONTRACT NO. - NONE

FILE NO.: 428D-20
251D-1

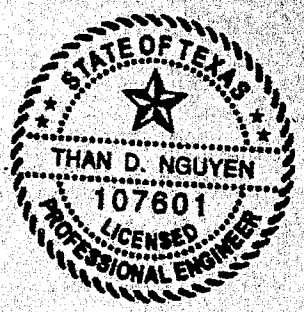
TRINITY WATERSHED MANAGEMENT DEPARTMENT

AND

DALLAS WATER UTILITIES

CITY OF DALLAS

DALLAS, TEXAS



4-14-14

be allowed at a minimum distance of 500 feet away from the landfill footprint as the Contractor will obtain approval from the Texas Commission on Environmental Quality and Dallas Fire Rescue. The trench burn location must be approved by the Engineer as a trench burn pit may be allowed near Borrow Areas A. No payment will be made for removal of additional trees to accommodate this trench burn. The Contractor shall verify if the trench burn pit is located within the landfill permit.

9. The primary borrow sources (in order of priority) are Borrow Areas A, C, B, and D. Borrow Area D will only be used is the City decides to not use Borrow Area B or additional soils are needed. The calculated amount of borrow dirt needed is 625,160 cubic yards as this amount can be obtained from Borrow Areas A and C together. The City will decide on the borrow areas used for this project as the grading plans for the borrow areas may change.

10. As clarification for Bid Item 222A (Dewatering for Borrow Area D) - Alternate Bid 1, this bid item will also apply during the installation of the clay cap until it is completed. No additional payment will be made for dewatering associated with Alternate Bid 2.

11. As clarification for the cubic yards and bank yards notes shown on the fill area plan sheets, those 2 numbers reflect the range of dirt volumes that could be brought to that fill area as the final layout has not been finalized to date. The grading plans are for information purposes only as Landscapes Unlimited will perform the spreading of the fill material.

12. This is a closed landfill project as the 40-hour safety trained in accordance with 29 CFR 1910.120 is not required but recommended. Borrow areas are not located within the landfill footprint.

13. This project will start subsequent to the start of the 1st City project mentioned above but shall run concurrent with such project. It is recommended that the Contractor follows the same sequencing as the 1st City project.

14. If there are exposed waste as a result of the Contractor's recent construction activities, the Contractor shall place at least 2 feet of clay material on top of this area and inform the Engineer as this will be considered incidental with no separate payment.

15. For Bid Alternate 3 (Bid Item 1346 – Process/Compact Fill at Structural Fill Locations), payment for this item will include survey staking, compaction, and geotechnical testing as this will be considered incidental to the bid item. Additional fill allowance shall be not be stockpiled and bidders are to assume an average haul distance to the center of each fill zone for this additional fill material. All additional fill material shall be spread by others.

16. The bid quantities for Bid Items 103 (Unclassified Excavation), 1341 (Transport Dirt to Fill Area 1), 1342 (Transport Dirt to Fill Area 2), 1343 (Transport Dirt to Fill Area 3), and

1344 (Transport Dirt to Fill Area 4) will not be renegotiated based on overages or underage of these bid items.

17. The Engineer (Than Nguyen), or an approved assignee, will sign all offsite waste manifests.

18. On the plans, there is an existing DWU wastewater easement along Elam Road and a United Gas easement in Borrow Area B. The Contractor shall pothole and verify the existence of any existing utility line in both areas as payment will be made through Bid Item 1652 (Locate Underground Utility Not Under Paving) for each of the 2 lines. Field verification is needed to determine if existing lines are still present or ever installed.

All bidders shall be required to add the following sentence to the inside of the front cover sheet of the special Provisions and Proposal with signatures:

_____ acknowledges
(Give Legal Name of Organization)

Receipt of Addendum No. 1, and has taken due cognizance of the said addendum in all its forms in the preparation and submission of this bid.

A 9. FEDERAL PRICE STABILIZATION ORDERS

Federal money is not involved. **NOT USED**

A 10. PRICE RENEGOTIATIONS

The proposal bid price for all non-measurable Items will not be subject to renegotiation due to the under-run or overrun of the contract quantities as set forth in ITEM 104.2.1 of the Standard Specifications.

This special provision A-10 has no effect on the other requirements of the Standard Specifications or the COD Addendum, as currently amended.

B-1 PROVIDE STORM WATER POLLUTION PREVENTION PLAN & IMPLEMENTATION, BID ITEM 1225C

The disturbed area for this project is **over five (5) acre**. Therefore, a Storm Water Pollution Prevention Plan (SWPPP) and a Storm Water Discharge Permit are required. A Construction Site Notice (CSN) shall be submitted to the City of Dallas, Trinity Watershed Management, Storm Water Division and posted at the site at least 48 hours prior to the start of construction. This item includes all work required by the contractor to provide and implement the SWPPP for the duration of this construction project.

This lump sum pay item will be paid proportionately to the completion portion of the overall project or per an accepted schedule of values for this item. This item includes providing, installing, maintaining and removing the required Best Management Practices (BMPs) or Erosion Control Devices (ECDs) for erosion control and storm water pollution prevention on the project site and drainage outfalls. The BMPs for erosion control commonly include, but are not limited to silt fence, diversion dikes, interceptor swales, sediment traps and basins, pipe slope drain, inlet protection, stabilized construction entrances, soil retention blankets, hay bale dikes, rock staging area/project site entrance, seeded erosion control matting, fabric inlet protectors and rock berms. Erosion control matting is required to protect disturbed sloped areas or area left disturbed for over 14 days. Refer to Section II, Division 1000 of the Standard Specifications for details of the common BMPs. The required BMPs may vary from the erosion control plan depending on site conditions and construction sequencing. The method of control shall result in minimum sediment retention of 70% as defined by the NCTCOG "BMP Manual". Deviations from the proposed control measures must be submitted to the Engineer for approval.

This lump sum pay item also includes conducting the required inspections, and maintaining all of the required documentation including the modifications and notes to the erosion control drawing. Construction activities will comply with the SWPPP and current City of Dallas storm water regulations.

The contractor is responsible for verifying the area that will be disturbed by the project including the staging area. If the total disturbed area including staging areas will exceed 5 acres, the Contractor is responsible for submitting a NOI instead of a CSN along with the NOI filled out the City of Dallas and paying the applicable fees ($125 estimated) such as the annual fee for both the contractor and the City of Dallas to TCEQ.

Upon substantial completion of this project, the Contractor will submit a notice of termination (NOT) for the SWPPP based on *"Another permitted Operator has assumed control over all areas of the site that have not been finally stabilized, and temporary erosion controls that have been defined in the SWP3 have been transferred to the new Operator"*.. The NOI AND SWPPP responsibilities will be then transferred to the developer (Landscapes Unlimited, LLC). The 70% vegetative cover requirement will

not apply but there are bid items for sodding and hydromulch. Technical Specification B-9.

No separate BMPs will be paid for implementing the SWPPP beside Bid Items 1225C (Provide and Implement SWPPP), Silt Fence (Bid Item 645) and 645B (Rock Check Dam).

The Engineer may decide that Bid Items 645 and 645B may be left in place. The Contractor should price in the removal of these items.

B-2 TRAFFIC CONTROL, BID ITEM 1601A

Traffic Control shall include the removal, installation and maintenance of all temporary traffic control devices (warning signs, barricades, arrow board, flagmen, temporary pavement markings for detour (if applicable) and any other temporary traffic control measures) implemented as directed by the Engineer to maintain the necessary traffic through the project.

This item also includes removal of existing traffic control devices (for example, stop sign, No Parking sing, etc.) All barricades and warning signs will conform to those sections of the "Traffic Barricades Manual" City of Dallas, Texas, Publication No 76-1025.

The Contractor shall furnish all materials for installation, labor and equipment necessary to construct and maintain traffic control for the duration of the project or for the period of time that the Engineer deems necessary for the safety of the traveling public. No separate payment.

Payment for this bid item will include any improvements to be made for the existing Loop 12 (aka Great Trinity Forest Way) underpass to travel from Elam Landfill to South Loop Landfill if this pathway is used by the Contractor.

B-6 MOBILIZATION, BID ITEM 110

B.1. General

Mobilization includes the movement of all labor, equipment and supplies, establishment of facilities necessary for work, and other work and operations which must be performed and cost no directly attributable to other pay items, excluding bidding costs, which must be incurred in order to enable the Contractor to begin work on other contract items. This item is applicable to contracts estimated to be $500,000 or more, unless otherwise determined by the Engineer.

B.2 Measurement

This item shall be measured as a Lump Sum. The percentage of the Lump Sum amount for this item will be measured by the provisions specified in B.3. Payment

B.3 Payment

Partial Payments of the Lump Sum bid for Mobilization shall be limited as follows:

1) Upon presentation of a paid invoice for the required bonds and/or insurance the Contractor will be paid that cost from the amount bid for Mobilization or 3% of the total contract amount, whichever is less

2) If a site facility such as a project office is necessary, mobilization to the project site will be considered. The Contractor shall provide a certified statement of his expenditure for the mobilization and set up of the facility and supporting equipment. Upon approval by the Engineer, the certified expenditure will be paid from the amount bid for Mobilization. The amount paid shall not be more than 10% of the Mobilization Lump Sum or 1% of the total contract amount, whichever is less.

3) When 1% of the *adjusted contract amount is earned, 50% of the Mobilization Lump Sum or 5% of the total contract amount shall be paid, whichever is less. Previous payments under this item will be deducted from this amount.

4) When 5% of the *adjusted contract amount is earned, 75% of the Mobilization Lump Sum or 10% of the total contract amount shall be paid, whichever is less. Previous payments under this item will be deducted from this amount.

5) When 10% of the *adjusted contract amount is earned, 75% of the Mobilization Lump Sum or 10% of the total contract amount shall be paid, whichever is less. Previous payments under this item will be deducted from this amount.

6) When all work under the contract is completed by the Contractor and accepted by the City, 100% of the Mobilization Lump Sum will be paid

*The adjusted contract amount is defined as the total contract amount less the Lump Sum bid for Mobilization. When work begins on the other contract items, the

Adjusted Contract Amount shall be used throughout for determining the amount earned under Mobilization.

Payment for this bid item will include the entire project area including all borrow and fill areas.

B-8 DEWATERING, BID ITEM 222

The project area may experience flooding from the nearby Trinity River. In addition, groundwater may be encountered within the identified borrow areas; see boring logs on the plan sheets. No treatment or testing is anticipated if discharged to the immediately surrounding area.

The Contractor is allowed to dewater this area through the use of installed berms (not a pay item) and pumping of this water towards the Trinity River as sheet flow within the project area. No testing of this surface water is needed.

In general surface and groundwater can either be used for dust control or discharged towards the Trinity River as overland flow. If the Contractor wants to discharge this water directly into the Trinity River, analytical testing and conformance to local, state, and federal regulations is needed as this treatment and testing will be paid by the Contractor.

Payment for Bid Item 222 (Dewatering) will be paid on a monthly basis based on a corresponding percentage of the lump sum bid price and will include the project duration for surface water and groundwater encountered. No separate pay item.

B-11 UNCLASSIFIED EXCAVATION, BID ITEM 103 & ALTERNATE BID ITEM 1

There are 4 borrow areas identified for this project; Borrow Area 1, Borrow Area 2, Borrow Area 3, and Borrow Area 4 (Bid Alternate 1).

The Contractor shall remove all trees in the borrow areas through Bid Items 639A (Remove Tree 6- 12 Inches Diameter), 639B (Remove Tree 13-24 Inches Diameter), and 639C (Remove Tree over 24 Inches). All trees will be removed offsite through these bid items as this is considered incidental to the bid items.

The Contractor shall excavate in the 4 identified borrow areas through Bid Item 103 (Unclassified Excavation). Payment for this bid item will be done through ground survey (no separate payment) performed by the Contractor before and after the excavation through a licensed Texas Profession Land Surveyor (RPLS) and a sealed summary report.

The Contractor shall then transport this dirt to 4 identified fill areas (Fill Area 1, Fill Area 2, Fill Area 3, and Fill Area 4) through Bid Items 1341 (Transport to Fill Area 1), 1342 (Transport to Fill Area 2), 1343 (Transport to Fill Area 3), and 1344 (Transport to Fill Area 4). The bid quantities were based on the closest borrow area with respect to the fill area. **Payment will be based on dirt brought to the fill areas regardless of the borrow area used or transported from.** For example, Borrow Source 3 is the closest borrow area to Fill Area 1. No additional payment will be made for dirt brought from Borrow Source 2 (if the Contractor decides to do this) to Fill Area 1. The Contractor will determine the borrow source location to use for each fill area.

Payment for Bid Items 1341, 1342, 1343, and 1344 will be through counted truck load (volume approved by the City of Dallas or Engineer for each truck) or through ground survey mentioned above for each fill area. The total quantities for Bid Items 1341, 1342, 1343, and 1344 will not exceed the bid quantity for Bid Item 103 and/or 103A (Unclassified Excavation for Borrow Area 4). No geotech testing or survey is needed for this placement of dirt by the Contractor except for Bid Alternate 3. Any unsuitable material (must be approved by the City of Dallas or Engineer) will be disposed of through Bid Item 1345 (Solid Waste Removal [Off Cap]) as this bid item will include transport, disposal, and any associated waste profiling; no separate payment made. This material may include landfill type material in the identified borrow areas.

As clarification, the Contractor will be paid through Bid Item 103 and/or Bid Items 1341, 1342, 1343, and 1344.

The contours shown on the plan sheets for the fill areas are for guidance only. The Contractor shall excavate dirt from the borrow areas and place the dirt based on guidance from the construction contractor for the developer, Landscape Unlimited, LLC (project manager will be Jack Morgan, [402] 613-2591, or

jmorgan@landscapesunlimited.com) who will be onsite at the same time. **As clarification, the Contractor will only dump dirt (collected from the borrow areas) to areas located with the fill areas and will not grade or compact this dirt.** This other contractor will then spread and compact the dirt per their grading plan. The grading plans may change during the construction phase so the Contractor will dump dirt as directed. The Contractor is only responsible for placing the dirt in areas designated (within the fill areas) and as directed. Placement of dirt will generally be in the vicinity of two dozers (owned and operated by the other contractor) working in that area. No stockpiling is anticipated as the dirt should be spread as soon as it is dumped by the Contractor. If this other contractor cannot keep up with the loads brought by the Contractor, the contractor shall dump the dirt in an agreed upon location within the fill areas. Therefore, the dirt will be placed in strategic locations in the fill areas. Coordination between both contractors will be needed.

After excavation of each borrow area is complete, or as certain areas of the borrow areas are completed, the Contractor shall grade the finished excavated areas and slopes so that they are smooth and have the final appearance of a lake. No separate pay item as this is considered incidental.

As guidance, this contractor is expected to start work on South Loop Landfill (South of Loop 12) in the southeast corner and then work westward and northwest. Elam Landfill (north of Loop 12) will be completed next and from south to north.

Borrow Area 4 will only be used if needed (Alternate Bid 1); as directed by the Engineer. This borrow area may not be needed if there are sufficient borrow material from the other 3 borrow areas; Borrow Areas 1, 2, and 3. For this alternate bid item, the Contractor shall excavate in this area through Bid Item 103A (Unclassified Excavation for Borrow Area 4) and dewater the existing pond and removal all debris through Bid Item 222A (Dewater and Debris Removal for Borrow Area 4).

Technical Specification B-14 (Geotechnical Information) will apply for this project also.

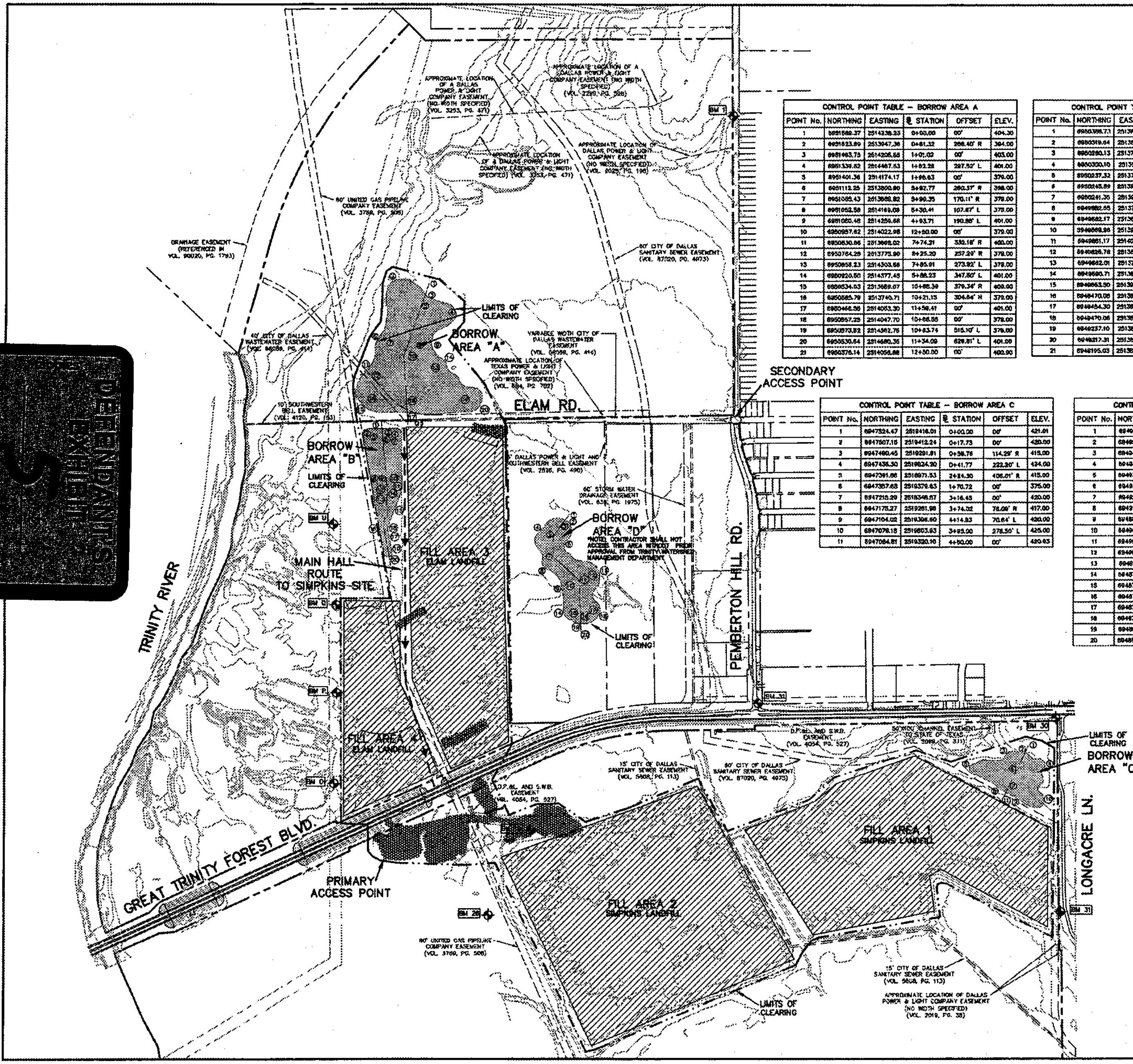
The Owner will decide the winning bidder based on the base bid or the base bid with all or any of the 3 bid alternates; Bid Alternate 1, Bid Alternate 2, and Bid Alternate 3.

B-14 GEOTECHNICAL INFORMATION

Geotechnical Investigation completed by GME.

The Contractor shall make his/her own interpretation based on the examination of the boring logs. The soil borings are not a part of this contract and are to be used for information only and are not warranted to be accurate in any way. The OWNER accepts no responsibility for any deviation from or variance in soil types and/or depths shown on the borings. The Contractor will not be permitted to request additional compensation for differing site condition or changed site condition based on soil borings in accordance with NCTCOG item 1.21(e).

EXHIBIT 5



CONTROL POINT TABLE – BORROW AREA A					
POINT No.	NORTHING	EASTING	℄ STATION	OFFSET	ELEV.
1	6951569.37	2514238.23	0+00.00	00'	404.30
2	6951523.89	2513947.38	0+81.32	268.40' R	394.00
3	6951463.75	2514206.55	1+01.02	00'	403.00
4	6951338.82	2514467.53	1+82.28	297.52' L	401.00
5	6951401.36	2514174.17	1+96.63	00'	379.00
6	6951112.25	2513800.80	3+92.77	260.37' R	398.00
7	6951085.43	2513888.82	3+90.35	170.11' R	379.00
8	6951052.58	2514149.08	5+30.41	107.87' L	378.00
9	6951060.48	2514256.68	4+93.71	190.88' L	401.00
10	6950957.62	2514022.98	12+50.00	00'	379.00
11	6950830.86	2513892.02	7+74.21	332.18' R	400.00
12	6950764.29	2513775.90	8+25.20	257.29' R	379.00
13	6950858.23	2514303.68	7+85.91	273.82' L	379.00
14	6950920.50	2514377.45	5+88.23	347.80' L	401.00
15	6950534.03	2513669.07	10+88.39	379.34' R	400.00
16	6950585.79	2513740.71	10+21.15	304.84' R	372.00
17	6950466.56	2514053.30	11+58.41	00'	401.00
18	6950657.25	2514047.70	10+66.55	00'	378.00
19	6950573.82	2514562.76	10+63.74	515.10' L	379.00
20	6950530.64	2514680.36	11+34.09	628.81' L	401.00
21	6950376.14	2514056.88	12+50.00	00'	402.90

CONTROL POINT TABLE – BORROW AREA B					
POINT No.	NORTHING	EASTING	℄ STATION	OFFSET	ELEV.
1	6950398.71	2513837.82	0+00.00	00'	400.00
2	6950319.64	2513843.16	0+69.29	00'	396.00
3	6950280.13	2513708.92	0+98.31	138.91' R	397.00
4	6950300.10	2513971.81	0+98.72	128.74' L	396.00
5	6950237.32	2513761.82	1+43.08	87.47' R	380.00
6	6950245.89	2513848.89	1+43.28	00'	380.00
7	6950241.35	2513924.61	1+53.66	75.16' L	380.00
8	6949882.65	2513743.71	4+97.39	132.94' R	396.00
9	6949682.17	2513619.88	5+03.65	57.03' R	380.00
10	6949569.98	2513941.20	5+25.20	82.99' L	380.00
11	6949861.17	2514007.93	5+39.13	128.86' L	396.51
12	6949626.78	2513881.37	5+63.63	00'	380.00
13	6949662.01	2513783.21	7+34.91	88.30' R	396.00
14	6949590.71	2513871.78	7+00.05	00'	380.00
15	6949553.50	2513950.78	7+31.59	81.46' L	393.00
16	6949470.08	2513818.43	8+23.88	37.84' R	395.00
17	6949454.30	2513858.05	8+37.05	00'	388.78
18	6949470.06	2513888.22	8+18.79	33.67' L	394.48
19	6949237.10	2513891.81	11+57.33	00'	389.00
20	6949217.31	2513893.19	11+77.40	00'	394.00
21	6949195.03	2513898.93	12+00.00	00'	394.41

CONTROL POINT TABLE – BORROW AREA C					
POINT No.	NORTHING	EASTING	℄ STATION	OFFSET	ELEV.
1	6947524.47	2519416.01	0+00.00	00'	421.01
2	6947507.15	2519412.24	0+17.73	00'	420.00
3	6947490.45	2519291.81	0+56.76	114.29' R	415.00
4	6947436.30	2519624.20	0+41.77	222.20' L	424.00
5	6947391.66	2518971.53	2+24.30	406.01' R	415.00
6	6947357.68	2519379.63	1+70.72	00'	375.00
7	6947219.29	2519349.57	3+16.45	00'	420.00
8	6947175.27	2519261.98	3+74.32	78.09' R	417.00
9	6947104.02	2519398.60	4+14.83	70.64' L	420.00
10	6947078.18	2519603.93	3+95.00	278.50' L	425.00
11	6947084.81	2519320.10	4+50.00	00'	420.93

CONTROL POINT TABLE – BORROW AREA D					
POINT No.	NORTHING	EASTING	℄ STATION	OFFSET	ELEV.
1	6949558.51	2515450.85	0+00.00	00'	385.41
2	6949528.54	2515429.32	0+36.79	00'	395.00
3	6949464.34	2515383.64	1+15.58	00'	375.00
4	6949436.12	2515211.21	2+37.02	125.48' R	397.00
5	6949383.75	2515312.27	2+39.03	00'	375.00
6	6949338.13	2515430.84	2+88.48	110.81' L	397.00
7	6949200.18	2515345.13	4+05.89	00'	375.00
8	6942100.67	2515272.94	4+13.45	119.00' R	397.00
9	6948982.80	2516393.47	5+84.85	132.81' R	396.00
10	6949013.24	2515468.33	8+21.38	60.64' R	375.00
11	6949034.88	2515533.98	6+88.35	00'	375.00
12	6949095.08	2515584.81	6+56.84	77.94' L	375.00
13	6949162.61	2515646.20	6+56.05	168.71' L	396.00
14	6948721.54	2515417.77	9+58.55	142.23' R	394.00
15	6948747.56	2515498.63	9+40.84	66.21' R	375.00
16	6948710.08	2515565.62	9+84.51	00'	375.00
17	6948753.68	2515650.58	9+48.44	93.24' L	375.00
18	6948732.77	2515730.22	9+76.81	166.08' L	392.00
19	6948630.81	2515572.72	10+63.99	00'	392.00
20	6948599.05	2515575.98	11+00.00	00'	392.27

0 200 400 600 1200
GRAPHIC SCALE IN FEET

BENCH MARK LIST

BM# 1 STANDARD CITY OF DALLAS WATER DEPARTMENT BENCHMARK ON WEST CONCRETE HEADWALL TO A TWIN 36" CONCRETE PIPE CULVERT ON PEMBERTON HILL ROAD AT THE CENTERLINE OF JEANE STREET.
N:6953057, E:251869 ELEV=431.01

BM D STANDARD CITY OF DALLAS WATER DEPARTMENT BENCHMARK ON SOUTH CORNER OF HEADWALL AT THE INTERSECTION OF PEMBERTON HILL ROAD AND LOOP 12 ON EAST SIDE OF INTERSECTION, 75'± NORTH OF CENTERLINE OF LOOP 12 AND 25'± EAST OF CENTERLINE OF PEMBERTON HILL ROAD.
N:6947930, E:2517113 ELEV=407.77

BM O "□" CUT FOUND ON SOUTHWEST CORNER OF CONCRETE FOOTING OF TXU TOWER, 13'± WEST OF TOWER CENTERLINE AND 339± NORTH OF LOOP 12.
N:6947232, E:2513428 ELEV=383.54

BM P "□" CUT FOUND ON SOUTHEAST CORNER OF CONCRETE FOOTING OF TXU TOWER, 12± EAST OF TOWER CENTERLINE AND 1148± NORTH OF LOOP 12.
N:6948028, E:2513448 ELEV=383.65

BM Q "□" CUT FOUND ON SOUTHEAST CORNER OF CONCRETE FOOTING OF TXU TOWER, 10± EAST OF TOWER CENTERLINE AND 818± NORTH OF LOOP 12.
N:6948797, E:2513441 ELEV=383.64

BM U "□" CUT FOUND ON SOUTHWEST CORNER OF CONCRETE FOOTING OF TXU TOWER, 11± WEST OF TOWER CENTERLINE AND 2604'± NORTH OF LOOP 12.
N:6949497, E:2513415 ELEV=388.29

BM 10 1/2-INCH IRON ROD WITH CAP SET 800'± SOUTHEAST OF A BRIDGE ON STATE HIGHWAY LOOP 12 AND 3800'± EAST OF THE TRINITY RIVER
N:6945816, E:2515137 ELEV=395.06

BM 26 1/2-INCH IRON ROD WITH CAP SET 1,144'± SOUTHEAST OF BRIDGE OF STATE HIGHWAY LOOP 12, 3,140'± EAST OF TRINITY RIVER.
N:6946379, E:2514771 ELEV=381.47

BM 30 1/2-INCH IRON ROD WITH CAP SET AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY LOOP 12 AND CONCRETE ENTRANCE DRIVE TO THE AUDUBON CENTER.
N:6947801, E:2519703 ELEV=429.94

BM 31 1/2-INCH IRON ROD WITH CAP SET 1,782'± SOUTH OF LOOP 12 AND 33'± WEST OF THE ENTRANCE TO THE AUDUBON CENTER.
N:6946107, E:2518788 ELEV=406.49

NOTE:
POSITIONS PROVIDED FOR BENCHMARKS ARE BASED ON A SURFACE COORDINATE SYSTEM

LEGNED

BM 31 BENCHMARK
BORROW AREA
FILL AREA
STRUCTURAL FILL AREA

DEFENDANT'S EXHIBIT 5

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY CHRISTOPHER M. JONES, P.E. 82681 ON 04/11/2014. ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

NO.	DATE	REVISION

Pacheco Koch 8350 N. CENTRAL EXPWY, SUITE 1000 DALLAS, TX 75206 972.235.3031 TX REG. ENGINEERING FIRM F-469 TX REG. SURVEYING FIRM LS-100080-00
DALLAS • FORT WORTH • HOUSTON

PROJECT LAYOUT

SIMPKINS REMEDIATION-
VEGETATIVE SUPPORT LAYER IMPROVEMENTS
TRINITY WATERSHED MANAGEMENT
CITY OF DALLAS, TEXAS

DESIGN	DRAWN	DATE	SCALE	NOTES	FILE	NO.
LHN	JHB	APRIL 2014	1"=400'		428D	20

4/28

PK FILE: 2741-14.098
DWG FILE: 2741-14.098P-LAYOUT.DWG
XREF FILE: 2741A-08-3807(REV).DWG

VEGETATIVE SUPPORT LAYER IMPROVEMENTS

COD_DCI_001762

EXHIBIT 6

DCI CONTRACTING, INC.

INVOICE

Number : OE-1

Date: June 19, 2015

City of Dallas
320 E. Jefferson
Room 312 - Patrick Divinoy and Joe Smetak
Room 307 - Than Nguyen and Susan Alvarez
Dallas, TX 75203

Project - Simpkins Remediation - Vegetative Support Layer (PBSWM007)

Billing for items completed since Invoice #8, but cannot be processed thru normal billing procedures due to Change Order #1 not being written and project time being extended due to no fault of DCI Contracting

Item	Description	Quantity	Unit	Unit Price	Total Due
	Original Contract Items				
222	Dewatering	0.0356	LS	$50,000.00	$1,780.00
1225C	SWPPP	0.0356	LS	$4,000.00	$142.40
1601A	Traffic Control	0.0714	LS	$10,000.00	$714.00
1346	Process / Compact Fill at Structural Fill	3,000	CY	$1.50	$4,500.00
				Subtotal	$7,136.40
	Approved Change Order Items				
102A	Remove Existing Concrete in Fill Area 2	1	LS	$5,706.00	$5,706.00
102B	Remove Existing Concrete in Fill Area 3	1	LS	$9,800.00	$9,800.00
102C	Subgrade Preparation for Structural Fill in Fill Area 2	1	LS	$3,496.00	$3,496.00
102D	Subgrade Preparation for Structural Fill in Fill Area 3 - First Tee	1	LS	$10,960.00	$10,960.00
102E	Limestone Placement for Subgrade Preparation in Fill Area 2 - Structural Fill	10,000	CY	$3.00	$30,000.00
102F	Additional Survey	1	LS	$13,200.00	$13,200.00
102G	Repair to Subgrade Preparation for Structural Fill in Fill Area 3 - First Tee	0.90	LS	$10,960.00	$9,864.00
222A	Additional Dewatering for Borrow Pond A	0.94	LS	$45,000.00	$42,300.00
640A	Remove Tree 6 - 12 inches Diameter	20	EA	$110.00	$2,200.00
640B	Remove Tree 13 - 24 inches Diameter	19	EA	$195.00	$3,705.00
640C	Remove Tree larger than 24 inches Diameter	1	EA	$500.00	$500.00
				Subtotal	$131,731.00
				Total Amount Due	**$138,867.40**

Invoice Submitted By: _____ Date: 6-19-15
David M. Proctor, Vice President

DEFENDANT'S EXHIBIT

2045 E. Hwy. 380, Suite 100 Decatur, Texas 76234
Office (940)626-0022 Fax (940)626-0047

Equal Opportunity Employer

EXHIBIT 7

DCI CONTRACTING, INC.

INVOICE

Number : OE-2

Date: September 24, 2015

City of Dallas
320 E. Jefferson
Room 312 - Patrick Diviney and Joe Smetak
Room 307 - Susan Alvarez
Dallas, TX 75203

Project - Simpkins Remediation - Vegetative Support Layer (PBSWM007)

Billing for items completed as authorized/directed by City of Dallas, and for claims during the construction process that we were unable to invoice due to the City of Dallas formatted billing. These items were to have been in Change Order #2 once Change Order #1 was approved, which has not happened as of this date.

Item	Description	Quantity	Unit	Unit Price	Total Due
	Blend in 2 scour areas on the western portion of Borrow Pond A- as quoted and directed	1	LS	$6,000.00	$6,000.00
	De-silt Pond A - as quoted and directed	1	LS	$6,000.00	$6,000.00
Claim 1	Expedite Rock Excavation	1	LS	$105,622.00	$105,622.00
Claim 2	Delete Pond B - Mileage above shortest point to shortest point haul - City authorized by e-mail 2-11-15	81315	CY	$0.50	$40,657.50
Claim 3	Haul dirt to Fill #1 from Pond A in lieu of Pond C - mileage above shortest point to shortest point haul - City authorized by e-mail 2-11-15	153,000	CY	$1.30	$198,900.00
Claim 4	June 17, 2014 claim for idle equipment, fuel and personnel due to redesign of Pond A, Pond C and deletion of Pond B after DCI was mobilized. Idle 6/17/14 to 7/8/14	22	Days	$3,875.00	$85,250.00
Claim 5	July 28, 2014 to September 4, 2014 claim on Dust Control Ponds	1	LS	$10,000.00	$10,000.00
Claim 6	August 14, 2014 to August 20, 2014: claim for idled equipment - shut down load out at Pond A for an archaeologist. 6 days additional time	1	LS	$43,200.00	$43,200.00
Claim 7	June 13, 2014 to date: 33 days of delays due to 3rd party interference with 23 identified major claims associated with them that caused delay, were identified by DCI and continues to happen	1	LS	$148,500.00	$148,500.00
				Total Amount Due	**$644,129.50**

Invoice Submitted By: _____ Date: 9-24-15
David M. Proctor, Vice President

DEFENDANT'S EXHIBIT 7

2045 E. Hwy. 380, Suite 100 Decatur, Texas 76234
Office (940)626-0022 Fax (940)626-0047

Equal Opportunity Employer

EXHIBIT 8

DCI CONTRACTING, INC.

INVOICE

Number : OE-3

Date: September 24, 2015

City of Dallas
320 E. Jefferson
Room 312 - Patrick Diviney and Joe Smetak
Room 307 - Susan Alvarez
Dallas, TX 75203

Project - Simpkins Remediation - Vegetative Support Layer (PBSWM007)

Billing for items completed since Invoice #8, and unable to invoice due to City of Dallas formatted billing, and change orders not being processed as we were promised.

Item	Description	Quantity	Unit	Unit Price	Total Due
	Original Contract Items				
103	Unclassified excavation	87612	CY	$0.50	$43,806.00
110	Mobilization	.25	LS	$118,000.00	$29,500.00
645	Geotextile Silt Fence	488	LF	$1.30	$634.40
1342	Transport Dirt to Fill Area 2	20,000	CY	$2.25	$45,000.00
1343	Transport Dirt to Fill Area 3	91,981.29	CY	$1.90	$174,764.45
1346	Process / Compact Fill at Structural Fill	(3,000)	CY	$1.50	($4,500.00)
				Subtotal	$289,204.85
	Approved Change Order Items				
102G	Repair to Subgrade Preparation for Structural Fill in Fill Area 3 - First Tee	0.10	LS	$10,960.00	$1,096.00
222A	Additional Dewatering for Borrow Pond A	0.06	LS	$45,000.00	$2,700.00
223A	Borrow Area A Scour Repair	1	EA	$7,003.50	$7,003.50
				Subtotal	$10,799.50
				Total Amount Due	$300,004.35

Invoice Submitted By: David M. Proctor, Vice President Date: 9-24-15

DEFENDANT'S EXHIBIT 4

2045 E. Hwy. 380, Suite 100 Decatur, Texas 76234
Office (940)626-0022 Fax (940)626-0047

Equal Opportunity Employer

EXHIBIT 9

DCI CONTRACTING, INC.

INVOICE

Number : OE-4

Date: September 24, 2015

City of Dallas
320 E. Jefferson
Room 312 - Patrick Diviney and Joe Smetak
Room 307 - Susan Alvarez
Dallas, TX 75203

Project - Simpkins Remediation - Vegetative Support Layer (PBSWM007)

Billing For Release of Retainage

Item	Description	Quantity	Unit	Unit Price	Total Due
	Release of Retainage				$118,585.55
				Total Amount Due	$118,585.55

Invoice Submitted By: _____ Date: 9-24-15
David M. Proctor, Vice President

DEFENDANT'S EXHIBIT 9

2045 E. Hwy. 380, Suite 100 Decatur, Texas 76234
Office (940)626-0022 Fax (940)626-0047

Equal Opportunity Employer

EXHIBIT 10

SEC. 12. BIDDING; SALE.

When the sale of bonds is in response to a request for bids, the bids may be opened and the bonds sold on the same day, whether at a regular or special meeting of the city council.

CHAPTER XXII. PUBLIC CONTRACTS

(Renumbered by Amend. of 6-12-73, Prop. No. 43)

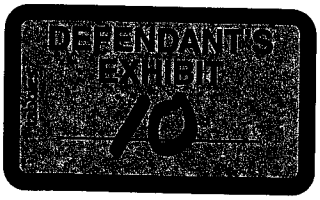
SEC. 1. SIGNATURES AND APPROPRIATIONS.

No contract, other than purchase orders for supplies and equipment and change orders authorized in accordance with Section 6, Chapter XXII of this Charter, shall be deemed executed on behalf of the city nor shall it be binding upon the city unless it has first been signed by the city manager and approved as to form by the city attorney. The expense thereof shall be charged to the proper appropriation. Whenever the contract charged to any appropriation equals the amount of said appropriation, no further contracts shall be signed. The publication of an ordinance or resolution to make it effective as an ordinance or resolution in accordance with Section 7 of Chapter XVIII of this Charter does not execute the ordinance or resolution as a contract unless the ordinance or resolution expressly so provides. (Amend. of 6-12-73, Prop. No. 36; Amend. of 4-3-76, Prop. No. 7; Amend. of 4-2-83, Prop. No. 1; Amend. of 8-12-89, Prop. No. 14; Amend. of 11-4-14, Prop. No. 9)

SEC. 2. CONTRACT LETTING.

(a) All city contracts calling for or requiring the expenditure or payment of an amount required by state law to be competitively bid creating or imposing an obligation or liability of any nature or character upon the city, must first be submitted for competitive bids in accordance with this chapter. Such bids shall be based upon plans and specifications prepared for that purpose. Notice of the time and place when and where such contract shall be let shall be published in a newspaper of general circulation in the City of Dallas once a week for two consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least 14 days prior to the date set for letting said contract. Such contract shall be let to the lowest responsible bidder.

(b) The city council shall by ordinance establish rules by which a contract may be let without city council approval; however, a contract that is required to be bid and which is let to other than the lowest bidder shall be first approved by the city council. The amount below which city council approval is not required for a contract may not be changed more often than once every 24 months.



(8) The sale of any public security as such term is defined in Chapter 1204 of the Texas Government Code, as amended. (Amend. of 6-12-73, Prop. No. 38; Amend. of 11-8-05, Prop. No. 13)

SEC. 5. PERSONAL SERVICES.

Competitive bidding need not be applied to contracts for personal or professional services.

SEC. 6. CHANGE ORDERS.

In the event that it becomes necessary to make changes in the plans or specifications after performance of the contract has been commenced, or it becomes necessary to decrease or increase the quantity of work to be performed, or materials, equipment or supplies to be furnished, the city council is authorized to approve change orders effecting such changes, but the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost by appropriating available funds for that purpose. This authority may be delegated to the city manager or the city manager's designee when authorized by state law. (Amend. of 6-12-73, Prop. No. 39; Amend. of 8-12-89, Prop. No. 14)

SEC. 7. PERFORMANCE AND PAYMENT BONDS.

Any prime contractor entering into a public contract with the city for the construction, alteration, or repair of any public building or structure, or for the prosecution or completion of any public work, shall be required, before commencing such work, to execute a performance bond in a good and sufficient amount, as required by law, conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. The bond must be solely for the protection of the city. The contractor shall also be required, before commencing such work, to execute a payment bond in a good and sufficient amount, as required by law, solely for the protection of all claimants supplying labor and material in the prosecution of the work provided for in the contract, for the use of each claimant. The bonds must be made by a bonding company authorized to do business in the State of Texas, and legal venue for enforcement of the bonds lies exclusively in Dallas County, Texas. A resident of Dallas County must be appointed as agent for delivery of notice and service of process by the surety. (Amend. of 6-12-73, Prop. No. 40; Amend. of 5-1-93, Prop. No. 4)

SEC. 8. OTHER BONDS AND SECURITY.

(a) In addition to the two bonds mentioned in Section 7 of this chapter, the city may require that the contractor show proof of coverage by public liability and property damage

EXHIBIT 11

information services, as those terms are defined by 47 U.S.C. Section 153, as amended.

(5) Subsections (h)(2) and (h)(3) of this section do not prohibit the city from rejecting all bids. (Ord. Nos. 24243; 25819; 28705)

SEC. 2-33. ALTERNATIVE METHODS OF PROCUREMENT FOR FACILITY CONSTRUCTION.

(a) The city council finds that, in general, the methods of procuring a contractor to perform facility construction established in Chapter 271, Subchapter H, Texas Local Government Code, as amended, provide a better value for the city than the methods set forth in Chapter 252, Texas Local Government Code, as amended. The provisions of Chapter 271, Subchapter H, Texas Local Government Code, as amended, are therefore adopted for use in procuring a contract for facility construction, superseding any conflicting provisions in the city charter.

(b) The city manager is authorized, in accordance with Chapter 271, Subchapter H, Texas Local Government Code, as amended, to choose which method of contractor selection provides the best value for the city on each facility construction project, subject to the applicable provisions of Sections 2-30 through 2-32 of this division. The city manager may, by administrative directive, establish procedures for choosing the method of contractor selection and to conduct the selection process, to the extent the procedures do not conflict with state law or Sections 2-30 through 2-32 of this division.

(c) If, in the case of an individual facility construction project, the city manager finds that there is better value in following the methods of procurement authorized in Chapter 252, Texas Local Government Code, as amended, the city manager is authorized to secure a contractor in accordance with the rules of that state law. If the procedures of Chapter 252, Texas Local Government Code, as amended, are used to procure a facility construction contract, the award of the contract must be to the lowest responsible bidder or to a local business when allowed under Section 2-32(h) of this division. The rules of Section 2-32(b) and (c) of this division also apply to an award made under this subsection. (Ord. Nos. 25819; 28705)

SEC. 2-34. PERSONAL, PROFESSIONAL, AND PLANNING SERVICES.

Personal, professional, or planning services must be procured, regardless of who approves the contract, in accordance with applicable state law and through procedures established by the city manager or a designee that are not in conflict with this article or applicable state law. (Ord. Nos. 24243; 25819)

SEC. 2-35. INTEREST ON CERTAIN LATE OR DELAYED PAYMENTS.

Unless otherwise authorized by the city council, at the request of the city manager, no contractor of the city is entitled to interest on any late or delayed payment that is caused by any good faith claim or dispute in connection with the contract, or that the city has a right or obligation to withhold under the contract or state or federal law, nor is any contractor entitled to attorney's fees in any dispute to collect such payments. (Ord. Nos. 18850; 19312; 20061; 22434; 24243; 25819)

SEC. 2-36. CONTRACTS WITH PERSONS INDEBTED TO THE CITY.

(a) Except as provided in Subsection (b), a bidder, proposer, or other person interested in receiving the award of a contract from the city or entering into any other transaction with the city shall be deemed nonresponsible and shall be denied any contract or other transaction with the city if that

SEC. 2-83. HANDLING BY DIRECTOR OF RISK MANAGEMENT.

The director of risk management is authorized to assist the city attorney in investigating, settling, and recommending disposition of any claim against the city for property damage, personal injury, or wrongful death that is alleged to have resulted from the negligent act or omission of an officer, servant, or employee of the city. The director of risk management is further authorized to investigate, at the request of the city attorney, any other claim against the city. (Ord. Nos. 20527; 22026; 26225; 28424; 28705)

SEC. 2-84. PAYMENT OF A PROPERTY DAMAGE, PERSONAL INJURY, OR WRONGFUL DEATH CLAIM WITHOUT PRIOR CITY COUNCIL APPROVAL.

(a) The city controller shall, without prior city council approval, pay a claim for property damage, personal injury, or wrongful death that has been settled for an amount that does not exceed $25,000 when payment is recommended by the city attorney, or by the director of risk management when assisting the city attorney in handling the claim, and approved by the city manager, except that payment of a meritorious claim, in whatever amount, must be approved by the city council as required by Section 4, Chapter XXIII of the city charter.

(b) For purposes of this section, claims for property damage, personal injury, and wrongful death resulting from the same occurrence may be considered as separate claims. (Ord. Nos. 14211; 15279; 17353; 20527; 21354; 22026; 24415; 26225; 28424; 28705)

SEC. 2-85. NON-WAIVER OF NOTICE OF CLAIM.

The delegation of authority to the city attorney or the director of risk management prescribed by this division does not grant the city attorney or the director of risk management authority to waive the six months written notice of claim requirement contained in Sections 1 and 2, Chapter XXIII of the city charter. (Ord. Nos. 14211; 20527; 22026; 26225; 28424; 28705)

Division 2. Breach of Contract Claims.

SEC. 2-86. NOTICE REQUIRED FOR CERTAIN BREACH OF CONTRACT CLAIMS.

(a) In this division:

(1) CITY CONTRACT or CONTRACT means a written contract that is properly executed or entered into by the city.

(2) DIRECTOR means the director of the city department that is responsible for administering the city contract that is the subject of a claim filed pursuant to this section, or the director's designee.

(3) PERSON means an individual, corporation, partnership, professional corporation, limited liability company, or any other legally constituted and existing business entity, other than the city.

(b) This section applies to any alleged breach of contract by the city occurring on or after January 30, 2006.

(c) A person may not file or maintain a lawsuit or alternative dispute resolution proceeding to recover damages for the city's breach of a city contract unless, as a condition precedent and a jurisdictional prerequisite to the filing of the lawsuit or proceeding:

(1) the person files a notice of claim with the city manager in writing, in the form prescribed in Subsection (d) of this section, not later than 180 days

after the date of occurrence of the event that gives rise to the breach of contract claim; and

(2) the city council, or the city manager in the case where a change order or contract amendment may be authorized by administrative action or administrative change order, neglects or refuses to pay all or part of the claim on or before the 90th day after the date of presentation of written notice in accordance with this section.

(d) The written notice of claim required under Subsection (c) must:

(1) state the facts giving rise to the alleged breach;

(2) state the legal theory justifying recovery for the alleged breach;

(3) state the amount the person seeks in damages; and

(4) include supporting documentation indicating how those damages were calculated.

(e) The city attorney is authorized to investigate, evaluate, and recommend settlement or disposition of any breach of contract claim made against the city pursuant to this section.

(f) The city manager and the director shall assist the city attorney in the investigation, evaluation, and recommendation processes related to the settlement and disposition of a breach of contract claim made against the city pursuant to this section.

(g) The delegation of authority conferred under Subsection (e) or (f) does not include the authority to waive any requirements of this section.

(h) Nothing in this section supersedes, modifies, or excuses compliance with any other requirement for notices established by any city contract, law, or equity.

(i) A person filing a claim under this section is not entitled to recover attorney's fees, either as a part of the damages calculated in the notice of claim or in any subsequent lawsuit or alternative dispute resolution proceeding.

(j) Nothing in this section may be construed as waiving the city's governmental immunity from suit or liability.

(k) The provisions of this section are incorporated by reference into all existing and future city contracts.

(l) The city manager may, with the concurrence of the city attorney, elect to treat a notice received pursuant to this section as a demand for nonbinding mediation. If the city manager treats the notice as a demand for nonbinding mediation, the city manager shall, within a reasonable time, notify the person filing the claim of that election and of the applicable procedures to be followed. The notice of nonbinding mediation extends by 60 days the applicable period for responding to a claim notice set forth in Subsection (c)(2). (Ord. Nos. 26225; 28705)

SEC. 2-87. PAYMENT OF A BREACH OF CONTRACT CLAIM WITHOUT PRIOR CITY COUNCIL APPROVAL.

The city controller shall, without prior city council approval, pay a breach of contract claim that has been settled for an amount that does not exceed $25,000 when payment is recommended by the city attorney and approved by the city manager. (Ord. 28705)

EXHIBIT 12

AFFIDAVIT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a notary public in and for the State of Texas, on this day appeared Charles Estee who is personally known to me, and who, after being duly sworn according to law, upon oath deposed and said:

> "My name is Charles Estee. I am an attorney licensed to practice law in the State of Texas and before this Court. I am competent to testify, I have personal knowledge of the matters stated herein, and they are true and correct. I am one of the attorneys representing the City of Dallas ("City") in this lawsuit.
>
> Attached as Exhibits 1 through 4 and 6 through 9 are copies of documents that are identical to excerpts of copies of documents produced by the Plaintiff in response to discovery requests by the City in this action. Attached as Exhibits 13 and 14 are true and correct copies of excerpts of discovery responses from the Plaintiff in response to discovery requests by the City in this action. Attached as Exhibit 10 is a true and correct copy of excerpts of the Dallas City Charter. Attached as Exhibit 11 is a true and correct copy of excerpts of the Dallas City Code.
>
> Further, Affiant sayeth not."

CHARLES ESTEE

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 13th day of June 2016.

ALLISON SMITH
Notary Public
STATE OF TEXAS
ID#128817440
My Comm. Exp. 12-05-2019

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

DEFENDANT'S EXHIBIT 12

EXHIBIT 13

NO. DC-15-12634-I

DAVIS CONSTRUCTION, INC. d/b/a DCI CONTRACTING, INC.,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	**162nd JUDICIAL DISTRICT**
the CITY OF DALLAS, TEXAS,	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUEST FOR ADMISSIONS

TO: Defendant, CITY OF DALLAS, TEXAS by and through its counsel of record, Mr. Charles Estee, Assistant City Attorney, Office of The City Attorney, City Of Dallas, Texas, 7BN Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201, 214/670-3519, 214/670-0622 Facsimile

COMES NOW DAVIS CONSTRUCTION, INC. d/b/a DCI CONTRACTING, INC., ("DCI"), Plaintiff in the above-referenced cause, and hereby serves this, his responses to the First Requests for Admissions served on him by Defendant.

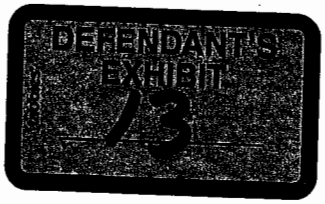
Respectfully submitted,

HARRISON ♦ STECK, P.C.

1100 Sinclair Building
512 Main Street
Fort Worth, Texas 76102
Telephone No. (817) 348-0400
Telecopier No. (817) 348-0406

By: _____
ANDREW B. PIEL, State Bar No. 90001830
apiel@harrisonsteck.com
JOHN J. DRAKE, State Bar No. 06108020

ATTORNEYS FOR DCI



RESPONSES TO REQUESTS FOR ADMISSION

REQUEST NO. 1: You entered into a written contract with the City on May 14, 2014.

RESPONSE:

ADMIT.

REQUEST NO. 6: The City has paid you $2,371,711, less retainage in the amount of $118,585.55.

RESPONSE:

ADMIT.

REQUEST NO. 7: In this lawsuit, you seek to recover sums greater than the $2,371,711 to be paid to you by the City.

RESPONSE:

ADMIT.

REQUEST NO. 8: You did not perform or otherwise do the work related to Bid Item 607A of the contract.

RESPONSE:

ADMIT.

REQUEST NO. 9: You did not perform or otherwise do the work related to Bid Item 608 of the contract.

RESPONSE:

ADMIT.

REQUEST NO. 10: You did not perform or otherwise do the work related to Bid Item 645B of the contract.

RESPONSE:

ADMIT.

REQUEST NO. 11: You did not perform or otherwise do the work related to Bid Item 1653 of the contract.

RESPONSE:

ADMIT.

REQUEST NO. 27: You seek to recovery as compensation under the contract overages of the

bid quantities for Bid Item 1341.

RESPONSE:

ADMIT.

REQUEST NO. 28: You seek to recovery as compensation under the contract overages of the bid quantities for Bid Item 1342.

RESPONSE:

ADMIT.

REQUEST NO. 29: You seek to recovery as compensation under the contract overages of the bid quantities for Bid Item 1344.

RESPONSE:

DENY.

REQUEST NO. 30: You seek to recovery as compensation under the contract overages of the bid quantities for Bid Item 103.

RESPONSE:

ADMIT.

REQUEST NO. 41: The contract stated there were four borrow areas designated as Borrow Areas A, B, C, and D.

RESPONSE:

ADMIT.

REQUEST NO. 43: The City decided not to use Borrow Area B in this project.

RESPONSE:

ADMIT.

REQUEST NO. 44: The item or claim in OE-2 identified as "Claim 2" is based on the City's decision not to use Borrow Area B.

RESPONSE:

ADMIT.

EXHIBIT 14

NO. DC-15-12634-I

DAVIS CONSTRUCTION, INC. d/b/a DCI CONTRACTING, INC.,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	**162nd JUDICIAL DISTRICT**
the CITY OF DALLAS, TEXAS,	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

TO: Defendant, CITY OF DALLAS, TEXAS by and through its counsel of record, Mr. Charles Estee, Assistant City Attorney, Office of The City Attorney, City Of Dallas, Texas, 7BN Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201, 214/670-3519, 214/670-0622 Facsimile

Pursuant to TEXAS RULES OF CIVIL PROCEDURE 192.1 and 197, Plaintiff DAVIS CONSTRUCTION, INC. ("PLAINTIFF"), hereby serves this, his responses to the *First Set of Interrogatories* served on him by Defendant CITY OF DALLAS, TEXAS ("DALLAS") in the above-referenced cause.

Respectfully submitted,

HARRISON ♦ STECK, P.C.

512 Main Street, Suite 1100
Fort Worth, Texas 76102
Telephone: 817-348-0400
Telecopier: 817-348-0406

BY: _____
Andrew B. Piel 90001830

ATTORNEYS FOR DEFENDANT

DEFENDANT'S EXHIBIT 14

RESPONSES AND OBJECTIONS TO INTERROGATORIES

DEFENDANT objects to the Instructions and Definitions included with RUTT's Interrogatories to the extent they exceed the scope and duties set forth in the TEXAS RULES OF CIVIL PROCEDURE. DEFENDANT will respond in compliance with the TEXAS RULES OF CIVIL PROCEDURE. DEFENDANT in all instances intends to preserve and does claim the attorney-client privilege and attorney work product exemption when applicable. No disclosure will be made that is subject to a claim of privilege or work product.

INTERROGATORY NO. 1: Please identify all amendments, supplements, changes, and/or modifications to the Contract executed between you and the City on or about May 14, 2014 concerning the Project. For each such change separately include the date of any such changes; the work to be performed, modified, and/or deleted; the increase or decrease in the contract term (if applicable); the increase or decrease in the quantities (if applicable); the increase or decrease of the amount the contract amount; any other changes to the Contract terms; and identify any documents that reflect the City's and your agreement to the amendment, supplement, change, and/or modification.

RESPONSE:

Please see the Invoice OE-1 that DCI submitted to the city dated June 19, 2015, as well as the correspondence dated June 24, 2015 and Invoices OE-2 and OE-3 that were submitted to the city on September 24, 2015 for specific information responsive to this Interrogatory. Copies of these documents accompany these Interrogatory responses as Exhibit "A", Bates Stamped DCI 00001 – 00068, and will also be produced in response to the Request for Production served on DCI by DALLAS.

INTERROGATORY NO. 2: Identify all "extra contract work" and/or "extra work" performed by you as you have used those terms in the Original Petition. (See Original Petition, paragraph 5.06). Please include a description of the work performed, the date the work was performed, and the price or the value of the work.

RESPONSE:

Please see the invoice OE-1 that DCI submitted to the city dated June 19, 2015, as well as the correspondence dated June 24, 2015 and Invoices OE-2 and OE-3 that were submitted to the city on September 24, 2015 for specific information responsive to this Interrogatory. Copies of these documents accompany these Interrogatory responses as Exhibit "A", Bates Stamped DCI 00001 – 00068, and will also be produced in response to the Request for Production served on DCI by DALLAS.

INTERROGATORY NO. 3: Identify the facts that support your contention that the City is estopped from denying you payment due to any failure by the City to issue a change order. (See

Original Petition, paragraph 5.06). To the extent you rely on written or oral statements by representative(s) of the City, for each written statement include a description of each document containing the written representation. For each oral statement identify the individual(s) making the statement, the date when the statement was made, the individual(s) to whom the statement was made, and a description of the statement.

RESPONSE:

The City electronically generated forms for DCI to submit its billings. The City refused to generate these forms for DCI to submit its billings in multiple instances. City Engineer Than Nguyen made multiple oral and written representations that if DCI performed extra work, either necessitated by site conditions or at his direction, DALLAS would pay DCI for the work. These representations are contained in numerous emails being produced in response to the requests for production served on DCI by DALLAS. DCI relied on these representations when it proceeded to perform the work.

Early in DCI's work on the Project, the City Engineer manipulated the payment process to make sure DALLAS paid DCI for the amount of trees removed over the relevant Bid Item quantity, but based on the unit price in DCI's bid. Many times in communications to DCI the City Engineer referred to change orders and when he anticipated these change orders being submitted to council. Since DCI performed work in reliance upon representations by the City Engineer, DALLAS cannot now argue any allegedly applicable billing or change order procedure bars DCI's claims. DALLAS cannot argue that since DALLAS never produced the electronic billing forms for the work DCI performed at the City Engineer's direction that DCI is precluded from billing for, or being paid for, the work. DALLAS may have intentionally avoided providing the electronic billings forms in an attempt to prevent DCI from billing, and as such, has unclean hands when it claims billing procedure were not followed.

Representative emails sent by the City Engineer to DCI evidencing these matters are accompany these Interrogatory responses as Exhibit "B", Bates Stamped DCI 00069 – 00363, and will also be produced in response to the Request for Production served on DCI by DALLAS.

INTERROGATORY NO. 4: Identify the facts that support your contention that you performed "extra work" at the City's specific direction. (See Original Petition, paragraph 5.06). Include the individual(s) directing that the extra work be performed, the date of the direction(s), the manner by which the direction(s) were communicated to you (e.g. orally in person, email, letter), and a description of the work.

RESPONSE:

Early in DCI's work on the Project, the City Engineer manipulated the payment process to make sure DALLAS paid DCI for the amount of trees removed over the relevant Bid Item quantity, but based on the unit price in DCI's bid. City Engineer Than Nguyen made multiple oral and written representations that if DCI performed extra work, either necessitated by site conditions or at his direction, DALLAS would pay DCI for the work. These representations are

EXHIBIT 15

AFFIDAVIT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a notary public in and for the State of Texas, on this day appeared Sarah Standifer who is personally known to me, and who, after being duly sworn according to law, upon oath deposed and said:

My name is Sarah Standifer. I am the director for the Trinity Watershed Management Department ("TWM") of the City of Dallas. I am competent to testify, I have personal knowledge of the matters stated herein, and they are true and correct. I have been an employee of the City of Dallas since 2002. TWM was formed in 2009 and I have been a part of the department since it was formed. I was appointed its director starting in March 2015.

On May 14, 2014, the City and Davis Construction, Inc. ("DCI") entered a contract related to earth moving for the construction of the new golf course located near the Trinity River. The contract was awarded to DCI pursuant to a competitive bid. The contract documents consist of a general contract, the City's Standard Specifications for Public Work Construction, the City's 2011 Addendum to the Standard Specifications, the City's Special Provision, and the and plans and drawing. Attached as Exhibit 1 is a true and correct copy of the general contract. Attached as Exhibit 2 is a true and correct copy of excerpts of the City's Standard Specifications. Attached as Exhibit 3 is a true and correct copy of excerpts of the City's Addendum. Attached as Exhibit 4 is a true and correct copy of excerpts of the City's Special Provision. Attached as Exhibit 5 is a true and correct copy of excerpts of the plans and drawings.

DCI was directed to start work on June 9, 2014. Under the terms of the contract, the project was to be completed by December 26, 2014. DCI abandoned the project on or about August 11, 2015, approximately 427 days after it was directed to start. DCI abandoned the project without completing the project.

The contract stated that DCI was to perform the work for a sum not to exceed $2,371,711. The City has paid DCI all sums owed under the contract except for the retainage of $118,585.55. There have been no change orders issued for this contract or project.

During the time DCI was working on the project, the City's project engineer was Than Nguyen. He was the City's representative overseeing the administration of the contract and DCI's performance. Neither Mr. Nguyen nor any City project engineer is authorized or has the authority to issue or grant change orders or increase contract price for City construction projects. Mr. Nguyen did not have the authority to increase the contract price for the contract with DCI.

The only method to increase the contract price of any City contract is through a written change order. Any change order of an amount greater than $50,000 must be approved and authorized through a resolution by the Dallas City Council. Any change order(s) totaling less than $50,000 may be approved and authorized without the City Council approval but such authorization has to written and approved by the TWM's director. Additionally, any change order(s) may not increase the contract price by more than 25% and must have funding sources specifically identified. Any contractor who performs work without a change order does so at its own risk. For the contract for DCI, there have been no change orders approved and authorized by City Council. There also has been no authorized and approved change order totaling less than $50,000 by the TWM's director. There have been no amendments to the contract between DCI and the City.

I learned that DCI sued the City claiming the City breached the contract and violated the Prompt Payment Act. I have seen and reviewed DCI's interrogatory answers which assert that its claims and damages were set forth in documents previously sent by DCI and its lawyers. Copies of its summary of the claims were labeled as OE-1, OE-2, OE-3, and OE-4 and true and correct copies are attached as Exhibits 6, 7, 8, and 9 respectively.

OE-4 seeks payment of the retainage in the amount of $118,585.55. The City has not paid the retainage because there is a dispute between the City and DCI as to DCI's entitlement to the retainage. Initially, DCI abandoned the job and project before it was completed. The work that DCI was to finish was completed by a third party at extra cost and expense. In addition, under the terms of the contract, the project was to be completed within 200 days and DCI was subject to liquidated damages in the amount of $500 per day for each day the work not timely completed. There were weather events that delayed the project. However, after giving credit for weather events, the projects was behind schedule when DCI abandoned the project. Also, final payment for some of the work was dependent on a before and after survey. The City was advised by a third-party that the post-work survey was performed in an inaccurate method. Also, DCI did not perform all of the items required under the terms of the contract and the City disputes DCI's entitlement to any monies for those items. Finally, DCI has not provided all of the documents necessary for a final payment and release of retainage as required by the terms of the contract as specified in the Standard Specifications and Special Provisions.

DCI agreed in Section 109.4 of the Standard Specifications of the Contract that the City could withhold payment or retainage for various reasons including a claim filed by or against DCI or reasonable evidence indicating probable filing of claims.

The contract states that it is subject to Section 2-86 of the Dallas City Code and that the ordinance is incorporated by reference into the contract. Section 2-86 provides the notice requirements necessary as a "condition precedent and a jurisdictional prerequisite" to filing a lawsuit seeking damages for the City's alleged breach of a contract. It also provides that a person filing such a claim "is not entitled to attorney fees, either as part of the damages calculated in the notice of the claim or in any subsequent lawsuit."

Section 2-35 of the Dallas City Code states unless otherwise authorized by City Council, "no contractor of the city is entitled to interest on any late payment or delayed payment that is caused

by any good faith claim or dispute in connection with the contract, . . . , nor is any contractor entitled to attorney's fees in any dispute to collect such payment." The contract does not contain any provision allowing the award of attorney fees.

In OE-1, OE-2, and OE-3 DCI seeks compensation for a variety of different items. There are no change orders for any of the listed items in any of the documents. There are no "approved change order items." The City has not agreed to or approved of the payment of any of these items. The City disputes and disagrees that any of these claimed items are owed. Under the heading "original contract items" were various items that were bid and agreed to in the original contract. There has been no agreement or change order with the City to increase the quantities or total dollar sum to be paid for each item. No records have been located that states DCI is proceeded with the work under protest as to any of these items in OE-1, OE-2, and OE-3. No records of any force account documentation from DCI for any of these items in OE-1, OE-2, and OE-3 have been located. I am not aware of any such records.

OE-1 purports to seek payment for "Original Contract Items" and "Approved Change Orders." Under the "Original Contract Items" heading are 4 items. All of these items are part of the original contract and have been paid in full, except for the retainage. To the extent these sums are intended to represent additional sums in a change order, there has been no change orders for these items and the City disputes DCI's entitlement to the claimed monies. Similarly, the items listed under "Approved Change Order Items" have not been approved or authorized by any change order and the City disputes DCI's entitlement to the claimed monies. Also the listed item numbers under "Approved Change Order Items" do not appear as part of the contract as reflected in DCI's bid.

OE-3 also purports to seek payment for "Original Contract Items" and "Approved Change Orders." Under the "Original Contract Items" heading are 6 items. All of these items are part of the original contract and have been paid in full, except for the retainage. To the extent these sums are to represent additional sums in a change order, there has been no change orders for these items and the City disputes DCI's entitlement to the claimed monies. In particular, OE-3 includes additional compensation for Items 103, 1342, and 1343. The contract states that the bid quantities for Bid Items 103, 1341, 1342, 1343, and 1344 "will not be renegotiated based on overages or underages of these bid items." Payment has already been made for the maximum bid quantities for these items, except for retainage.

Similarly, the items listed under "Approved Change Order Items" on OE-3 have not been approved or authorized by any change order and the City disputes DCI's entitlement to the claimed monies. Also, with one exception, the listed Item numbers do not appear as part of the contract as reflected in DCI's bid. Item 222A is in the contract for a total of $35,000 but now appears in OE-3 as $45,000.

OE-2 purports to be an invoice for 7 different claims and 2 other matters. None of these claims or matters have not been approved or authorized by any change order and the City disputes DCI's entitlement to the claimed monies.

Claim 2 of EO-2 is apparently based on the City's decision to delete an area, Borrow Area B, as a source of excavated soil. The contract stated there were four borrow areas designated as Borrow

Areas A, B, C, and D (also referred to as ponds) which were to be used to transport dirt to 4 fill areas, identified as Fill Area 1, Fill Area 2, Fill Area 3, and Fill Area 4. The contract also said "the City will decide on the borrow areas used for this project as the grading plans may change" and "payment will be based on dirt brought to the fill areas regardless of the borrow area used or transported from."

Claims 4, 6, and 7 of OE-2 claims are apparently based on claimed delays, hinderances, and disruptions to DCI primarily caused by third party interference. The contract states that "no adjustment shall be made to the CONTRACT price and the CONTRACTOR may not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hinderance, disruption, force majeure, impact or interference foreseen or unforeseen, resulting in adjustment of the CONTRACT time, including but not limited to those caused in whole or in part by the acts, omissions, failures, negligence or fault of OWNER, its officers, servants or employees."

Prior to filing this lawsuit, DCI did not send a written notice of claim to the Dallas City Manager regarding any of the allegations made in DCI's original petition. A notice of claim was submitted to the Dallas City Manager on May 31, 2016, after the lawsuit had been filed.

Attached as Exhibit 10 is a true and correct copy of excerpts of the Dallas City Charter. Attached as Exhibit 11 is a true and correct copy of excerpts of the Dallas City Code.

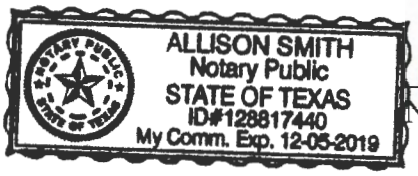
I am one of the custodians of records for the TWM. It was the regular course of business for the City's TWM Department for an employee with knowledge of the act, event, or condition to make a record or to transmit information thereof to be included in such record, and that such records be made at or near the time, or reasonably soon thereafter. Attached as exhibits listed below are true and correct copies of excerpts of the City's records.

Exhibit 1, general contract;
Exhibit 2, excerpts of the City's Standard Specifications for Public Work Construction;
Exhibit 3 excerpts of the City's 2011 Addendum to the Standard Specifications;
Exhibit 4, excerpts the City's Special Provisions;
Exhibit 5 excerpts of the plans and drawing;
Exhibit 6, OE-1;
Exhibit 7, OE-2;
Exhibit 8, OE-3;
Exhibit 9, OE-4;
Exhibit 10, excerpts of the Dallas City Charter;
Exhibit 11, excerpts of the Dallas City Code;

Further, Affiant sayeth not."

SARAH STANDIFER

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 13th day of June 2016.



NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS