

MARGIE R. IBARRA  
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WEBB COUNTY, TEXAS

WEBB COUNTY INVITATION TO BID "I.T.B. 2021-011"  
"MIRANDO CITY WATER WELL CONSTRUCTION PROJECT PHASE II"  
TXCDBG TCDP CONTRACT NO. 7219095

STATE OF TEXAS \*

KNOW ALL MEN BY THESE PRESENTS:

BY REH DEPUTY

COUNTY OF WEBB \*

This Agreement is made and entered into by and between **WEBB COUNTY, TEXAS**, a Political Subdivision of the State of Texas (hereinafter "Owner") and **ALSAY, INC.**, a Texas Corporation, (hereinafter "Contractor").

For and in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the Parties do hereby agree as follows:

**WITNESSETH**, that the Contractor and Webb County for the considerations stated herein mutually agree as follows:

**ARTICLE 1. Statement of Work.** The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete all work required for the construction of the "Mirando City Water Well Project Phase II" embraced in the Project; namely, **TX CDBG TCDP CONTRACT NO. 7219095**-Webb County Invitation to Bid "I.T.B. 2021-011 "Mirando City Water Well Construction Project Phase II, for the Webb County Economic Development Department/Texas Community Development Block Grant (TxCDBG) project, all in strict accordance with the contract documents including all addenda thereto, numbered n/a, and construction plans, foundation plans, project designs, job specifications and any addendums thereto.

**"ARTICLE 2. The Contract Price.** Webb County will pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in Section 109 hereof, **the BASE BID sum of THREE HUNDRED SIXTY-SIX THOUSAND, EIGHT HUNDRED SIXTY AND 00/100 DOLLARS (\$366,860.00); this agreement is expressly made to a condition precedent in the event that Option "A"/Alternative Bid No. 5\*\* in the additional sum of TWO HUNDRED SEVENTY FIVE THOUSAND, SEVEN HUNDRED FORTY AND NO/100 DOLLARS (\$275,740.00) to drill and complete well #5 is needed.**

**If Option "A"/Alternative Bid #5\*\* is selected by Webb County, then in that event the total contract award amount shall be increased by the sum of \$275,740.00 for drilling and completion of Well #5, and the final total contract amount shall be SIX HUNDRED FORTY-TWO THOUSAND SIX-HUNDRED AND NO/100 DOLLARS (\$642,600.00\*\*\* (Base Bid (Well #4 \$366,860.00) + Option "A" Alternative Bid for Well #5 \$275,740.00).**

Option "A" to drill and complete one additional water well #5, shall only be used in the event that the completed Mirando City water well No. 4, does not meet the minimal 35 gallons per minute (g.p.m.) water flow rate as required by the Texas Commission on Environmental Quality (T.C.E.Q.).

The Project Engineer and/or the Webb County Engineer shall determine if the one (1) additional Mirando City water well #5, shall be added to the scope of work to be drilled and completed if needed.

Contractor shall notified in writing of Webb County's intent to exercise Option "A" within Seven (7) working days from the date of the certification of the minimal 35 g.p.m. water flow rate testing of well #4.

**If Option "A" is elected to be used by Webb Co., the Contractor shall be given an additional time period of Sixty (60) consecutive days to drill and complete the one (1) additional water well #5.**

**The 60 day time for completion of Option "A" shall commence within three (3) calendar days after Webb County's receipt and verification of the increased and updated Performance and Payment bonds and insurance coverages in the new total amount \$642,600.00\*\*\* (Base Bid (Well #4 \$366,860.00) + Option "A" Alternative Bid for Well #5 \$275,740.00).**

Webb County, reserves the exclusive right to determine if the minimal 35 g.p.m. water flow rate is being produced by well #4, and in compliance w/TCEQ.

If the completed Mirando City water well #4 does produce the minimal accepted 35 g.p.m. water flow rate, then in that event Option "A"/Alternative bid for well #5 (\$275,740.00) will not be required or exercised by Webb County.

**ARTICLE 3. The Contract.** The executed contract documents shall consist of the following components:

- |   |  |
|---|--|
| a. This Agreement (pgs. 1-3)                          | g. Signed Copy of Bid (Exhibit "C" p. 328. |
| b. General Conditions (Part I)-Exhibit "A", p. 4-32.  | h. Plans & Drawings (Exhibit "D", p. 453   |
| c. Invitation for Bids (I.T.B.) -Exhibit "B", p. 33 . | i. <u>Additional Exhibits see page 30.</u> |
| d. Technical Specs.- Exhibit "B"                      |  |
| e. Special Conditions -Exhibit "B"                    |  |
| f. Instructions to Bidders-Exhibit "B"                |  |


**ARTICLE 4. Performance.** Work, in accordance with the Contract dated **SEPTEMBER 8th, 2021**, Contractor shall commence on or before **SEPTEMBER 27th, 2021**. and Contractor shall complete the **BASE BID SCOPE OF WORK/Well #4** within **NINETY (90)**, consecutive calendar days thereafter.

In the event that Webb County elects to use OPTION "A", to drill and complete one (1) additional water well #5, then in that event, the Contractor shall be notified in writing within of such election to use OPTION "A", and Contractor shall be given an additional **SIXTY (60)**, consecutive calendar days thereafter, for additional time to complete the scope of work set forth in **Option "A"/Alternative Bid for Well #5 \$275,740.00).**


This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in **TRIPLICATE** original copies on the day and year first above written.

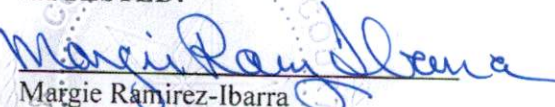
ALSAY, INC.  
A Texas Corporation

By:   
CRISTIAN RIVERA  
Title: Asst. Secretary  
Date: September 3, 2021

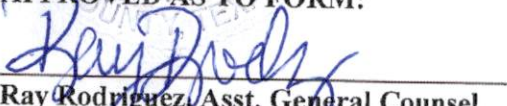
WEBB COUNTY, TEXAS

  
TANO E. TIJERINA  
WEBB COUNTY JUDGE  
Date: September 7, 2021

ATTESTED:

  
Margie Ramirez-Ibarra  
Webb County Clerk

APPROVED AS TO FORM:

  
Ray Rodriguez, Asst. General Counsel  
Webb County Civil Legal Division


\*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court on July 26th, 2021; Item No. 34 Approval of Construction Contract/Alsay, Inc. (ITB-2021-011).

**Corporate Certifications**

I, Cristian Rivera, do hereby certify that I am the Asst. Secretary of Alsay, Inc., a Texas Corporation, being the corporation named as Contractor herein; that I, Cristian Rivera, signed this Agreement in my on behalf of the Contractor, in my corporate capacity as an authorized officer of said company; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

ALSAY, INC.  
A Texas Corporation

By:   
CRISTIAN RIVERA  
Title: Asst. Secretary  
Date: September 3, 2021

**EXHIBIT "A"**  
**CONTRACT TERMS & GENERAL CONDITIONS - PART I**  
**FOR CONSTRUCTION**

1. Contract and Contract Documents

- (a) The project to be constructed pursuant to this contract will be financed with assistance from the Texas Department of Agriculture - Office of Rural Affairs through a Community Development Block Grant (TxCDBG) and is subject to all applicable Federal and State laws and regulations.
- (b) The Plans, Specifications and Addenda shall form part of this contract and the provisions thereof shall be binding upon the parties as if they were herein fully set forth.

2. Definitions

Whenever used in any of the Contract Documents, the following meanings shall be given to the terms here in defined:

- (a) The term "Contract" means the Contract executed between the Webb County, Texas, and ALSAY, INC., hereinafter called "Contractor", of which these GENERAL CONDITIONS, form a part thereof.
- (b) The term "Project Area" means the area within the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.
- (c) The term "Engineer" means Webb County Engineer Luis Perez-Garcia, P.E., Director-Webb County Engineering Dept., Engineer in charge, serving Webb County with architectural or engineering services, his successor, or any other person or persons, employed by Webb County for the purpose of directing or having in charge the work embraced in this Contract.
- (d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

3. Supervision by Contractor

- (a) Except where the Contractor is an individual and personally supervises the work, the Contractor shall provide a competent superintendent, satisfactory to the Engineer, on the work at all times during working hours with full authority to act as Contractor's agent. The Contractor shall also provide adequate staff for the proper coordination and expediting of his work.
- (b) The Contractor shall be responsible for all work executed under the Contract. Contractor shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

4. Subcontracts

- (a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until Contractor has verified the subcontractor is eligible to participate in federally funded contracts.
- (b) No proposed subcontractor shall be disapproved by Webb County except for cause.

- (c) The Contractor shall be as fully responsible to Webb County for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them.
- (d) Nothing contained in the Contract shall create any contractual relation between any contractor, subcontractor and Webb County, Texas.

5. Fitting and Coordination of Work

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

6. Payments to Contractor

(a) Partial Payments

- 1) The Contractor shall prepare the requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment, and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.
- 2) Monthly or partial payments made by Webb County to the Contractor are advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Webb County. Such payments shall not constitute a waiver of the right of Webb County, Texas to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to Webb County in all details.

(b) Final Payment

- 1) After final inspection and the acceptance by Webb County of all work under the Contract, the Contractor shall prepare the requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Contract. The total amount of the final payment due the Contractor under this Contract shall be the amount computed as described above less all previous payments.
- 2) Before paying the final estimate, Webb County shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor. Webb County may make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.
- 3) Any amount due Webb County under Liquidated Damages shall be deducted from the final payment due the contractor.



(c) Payments Subject to Submission of Certificates

Each payment to the Contractor by Webb County shall be made subject to submission by the Contractor of all written certifications required of it and its subcontractors.

(d) Withholding Payments

Webb County may withhold any payment due the Contractor as deemed necessary to protect Webb County, and if so elects, may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of Webb County, Texas and will not require Webb County to determine or adjust any claims or disputes between the Contractor and its subcontractors or material dealers, or to withhold any moneys for their protection unless the Webb County elects to do so. The failure or refusal of Webb County to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

7. Changes in the Work

(a) Webb County may make changes in the Scope of Work (see Exhibit required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any obligations under the Contract or any guarantee given pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by TX-CDBG and by a majority vote of a quorum of the Webb County Commissioner's Court prior to execution of same.

(b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Webb County authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

(c) If applicable unit prices are contained in the Contract, Webb County may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%).

(d) Each change order shall include in its final form:

- 1) A detailed description of the change in the work.
- 2) The Contractor's proposal (if any) or a confirmed copy thereof.
- 3) A definite statement as to the resulting change in the contract price and/or time.
- 4) The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order.
- 5) The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

8. Claims for Extra Cost

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to Webb County, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to Webb County and work shall not proceed except at the Contractor's risk, until written instructions have been received from Webb County and/or the Webb County Engineer, his or her authorized representative and the Project Engineer.
- (d) If, on the basis of the available evidence, Webb County determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

9. Termination, Delays, and Liquidated Damages

- (a) Right of Webb County, Texas to Terminate Contract for Convenience

Webb County, may at any time and for any reason terminate Contractor's services and work at Webb County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by Webb County, Texas; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against Webb County, Texas for any additional compensation or damages in the event of such termination and payment.

- (b) Right of Webb County, Texas to Terminate Contract for Cause

Termination for Cause

If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City/County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City/County, be turned

over to the City / County and become the property of the City / County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of contract by the Contractor, and the City/County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

In the event that any of the provisions of this contract are violated by the Contractor, or by any subcontractors, Webb County, may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, Webb County shall immediately serve notice thereof upon the Surety and the Contractor.

The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, Webb County may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to Webb County for any excess cost incurred. In such event the Webb County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

(c) Liquidated Damages for Delays.

If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the Webb County as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of **FIVE HUNDRED FIFTY AND NO/100 DOLLARS (\$550.00)** for each calendar day of delay, until the work is completed. The Contractor and Contractor's sureties shall be liable to Webb County for the amount thereof.

**Contractor and Owner do hereby acknowledge that "actual damages are uncertain and would be difficult of ascertainment" and therefore both parties do hereby mutually agree that the following stipulated sum of per diem liquidated damages is a reasonable amount. The parties further express and acknowledge that the amount of liquidated damages is meant to be "compensatory" and not "punitive", and Contractor further agrees to pay, as liquidated damages, the sum of FIVE HUNDRED FIFTY AND NO/100 DOLLARS (\$550.00) per day for each consecutive day there-in-after the date of substantial completion, as herein provided above in Section 9 (c).**

(d) Excusable Delays.

- 1) The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:
- 2) Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;



- 3) Any intentional and/or negligent acts of Webb County;
- 4) Causes not reasonably foreseeable by the parties to this Contract at the time of execution which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, terrorism, war, acts of another Contractor in the performance of some other contract with Webb County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.
- 5) Provided, however, that the Contractor promptly notifies Webb County within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, Webb County shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, Webb County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

10. Assignment or Novation

The Contractor shall not assign nor transfer, whether by assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Webb County by formal action of a majority of a quorum by the Webb County Commissioner's Court. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, Contractors, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

11. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Webb County for review. Contractor shall be liable for any issues or expenses in the event the discrepancy is not submitted to the Webb County.

12. Shop Drawings

- (a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in **Three (3) copies** for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at Contractor's own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.
- (b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.

- (c) If a shop drawing is in accordance with the contract or involves only minor adjustment in the interest of Webb County not involving a change in contract price or time, the engineer may approve the drawing. The approval shall not relieve the Contractor from responsibility to adhere to the contract or for any error in the drawing.

13. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of Webb County for any additional information which should be furnished by Webb County under the terms of this Contract, and which is required in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

14. Materials and Workmanship

- (a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- (b) The Contractor shall furnish to Webb County for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.
- (c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- (d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.
- (e) Webb County may require the Contractor to dismiss from the work such employee or employees as the Webb County or the County and/or the Project Engineer may deem unqualified.

15. Samples, Certificates and Tests

- (a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of

samples or certificates for approval shall not be considered just cause for an extension of the contract time.

- (b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.
- (c) Approval of any materials shall be general only and shall not constitute a waiver of Webb County's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.
- (d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
  - 1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
  - 2) The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
  - 3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
  - 4) Webb County will pay all other expenses.

16. Permits and Codes

- (a) The Contractor shall give all notices required by and comply with all applicable federal and state laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers. Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to Webb County. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, Webb County will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.
- (b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to Webb County.

- (c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.
- (d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.
- (e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.
- (f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by Webb County, shall moisten the surrounding area to prevent a dusty condition.

17. Care of Work

- (a) The Contractor shall be responsible for all damages to person or property that occur as a result of its fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.
- (b) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from Webb County is authorized to act to prevent such threatened loss or injury. Contractor shall follow all instructions of Webb County.
- (c) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and shall be responsible for completely repairing any damage thereto caused by the operations.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless Webb County from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Webb County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

18. Accident Prevention

- (a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Department of Labor.

- (b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.
- (c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish Webb County with reports concerning these matters.
- (d) The Contractor shall indemnify and hold harmless the Webb County from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.
- (e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. All OSHA Standards for trench safety must be adhered to by the Contractor.
- (f) The contractor shall at all time conduct work in such a manner as to ensure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of Webb County, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of Webb County at the expense of the Contractor.

19. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for laborers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

20. Use of Premises

- (a) The Contractor shall confine equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the Webb County, and shall not unreasonably encumber the site or public rights of way with materials and construction equipment.
- (b) The Contractor shall comply with all reasonable instructions of Webb County and all existing federal, state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

21. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

22. Inspection

- (a) All materials and workmanship shall be subject to inspection, examination, or test by Webb County and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. Webb County shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, Webb County may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of Webb County.
- (b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by Webb County will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.
- (c) The Contractor shall notify Webb County sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of Webb County, the Contractor shall uncover for inspection and recover such facilities at Contractor's expense, when so requested by Webb County.
- (d) Should it be considered necessary or advisable by Webb County at any time before final acceptance of the entire work to make an examination of work already completed, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be reimbursable and if completion of the work of the entire Contract has been delayed, a suitable extension of time will be approved.
- (e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards to: (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.
- (f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by Webb County or its agents shall relieve the Contractor or its sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

23. Review by Webb County

Webb County and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by Webb County through its authorized representatives or agents.



24. Final Inspection

When the Improvements included in this Contract are substantially completed, the Contractor shall notify Webb County in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. Webb County will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

25. Deduction for Uncorrected Work

If Webb County deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and Webb County and subject to settlement, in case of dispute, as herein provided.

26. Insurance

- a. **Contractor and Subcontractor Insurance:** Proof of Insurance: The Contractor shall furnish Webb County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after Sixty (60) days written notice has been received by Webb County."

The financial integrity of Contractor is of interest to the Owner, therefore, subject to the right of Contractor to maintain reasonable deductibles in such amounts as are approved by the Owner. Contractor shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated "A-/VII" or better by A.M. Best Company (Best's Key Insurance Company Rating Guide, current edition and/or as amended) and/or otherwise acceptable to Webb County/Webb County Risk Manager, the following types and amounts:

The Contractor shall not commence work under this Agreement until it has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on its Subcontract until the insurance required of the Subcontractor has been so obtained and approved.

- a. **Commercial General Liability:** \$1M per occurrence/\$2M General Aggregate/\$2M Products Completed Operations General Aggregate - The County will be added as an Additional Insured with ISO endorsements CG 2010 and CG 20-37 "or the equivalent".

The Owner shall require that the contractor's and subcontractors coverage be primary and non-contributory. In addition, Owner shall require the Contractor to provide insurance coverages to also include the products and completed operations coverages for at least One (1) year following acceptance and completion of the project by Owner.")

The Contractor's and/or Subcontractor's carrier shall agree to Waiver Their Rights to Subrogate Against the County and shall provide not less than a Sixty (60) Days' Notice of Cancellation to the County directly from the Carrier

**Worker's Compensation Insurance:** The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this contract and, in case of

any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance as follows.

Coverage A: Statutory Texas Medical, Accidental Death or Dismemberment and Lost time as mandated by the Texas Workers' Compensation Statute; Coverage B: Employers Liability - \$1M Per Employee Per Accident/ \$1M Per Employee - Disease/ \$1M Policy Aggregate - The Contractor's carrier shall agree to Waive Their Rights to Subrogate Against the County and provide not less than Sixty (60) Days' Notice of Cancellation to the County directly from the Carrier.

- b. **Scope of Insurance and Special Hazards:** The insurance required under Subparagraph a and b, above, shall provide adequate protection for the Contractor and his/her Subcontractor's, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazard which may be encountered in the performance of this Contract.
- c. **Builder's Risk Insurance (Fire and Extended Coverage):** The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage on a 100 percent (100%) completed value basis on the insurable portion of the project. The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.
- d. **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The Insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the Owner."

The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as Insureds or Additional Insureds.

- e. Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional name insured party with respect to General & Subcontractor's Comprehensive Liability, Builder's Risk, Fire and/or Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of Texas shall be contained in the Workers' Compensation, and all liability policies.

## 27. Warranty of Title

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same, together with all improvements and appurtenances constructed or placed by Contractor, to Webb County free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and

notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

28. Warranty of Workmanship and Materials

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by Webb County or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of ONE (12) months from the date of final acceptance of the work.

29. Job Offices

- (a) The Contractor and its subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. Webb County shall be consulted with regard to locations.
- (b) Upon completion of the improvements, or as directed by Webb County, the Contractor shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

30. Partial Use of Site Improvements

Webb County may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:

- (a) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- (b) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.

31. Local Program Liaison

For purposes of this Agreement, James Flores, Director, Webb County Economic Development Department [jflores@webbcountytx.gov](mailto:jflores@webbcountytx.gov) (956) 523-4605 or his equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

32. Access to Information

(a) The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), and Webb County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City's/County's TxCDBG contract with TDA.

(b) Contractor shall include the substance of this clause in all subcontracts it awards.

33. Records Retention

- (a) The Contractor shall retain all required records for three (3) years after Webb County makes its final payment and all pending matters are closed.
- (b) Contractor shall include the substance of this clause in all subcontracts it awards.

34. Resolution of Program Non-Compliance and Disallowed Costs

In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

35. Compliance with Davis-Bacon Act

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached as **Exhibit "F"** and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by Webb County for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5 (a) (1) (iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Contractor and its subcontractors shall not, by any means, induce any person employed in the construction, completion, or repair of public work, give up any part of the compensation to which he or she is otherwise entitled. Webb County must report all suspected or reported violations to TDA.

36. Conflicts of interest.

- (a) Governing Body. No member of the governing body of Webb County and no other officer, employee, or agent of Webb County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the Webb County, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Firm shall take appropriate steps to assure compliance.

- (b) Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and Webb County, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance.
- (c) The Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and Webb County or this Contract. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and Webb County or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

37. Conflict Disclosure Statement Required. Sec. 176.003 Texas Loc. Govt. Code.

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
  - (1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and
  - (2) the vendor:
    - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
      - (i) a contract between the local governmental entity and vendor has been executed; or
      - (ii) the local governmental entity is considering entering into a contract with the vendor;
    - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
      - (i) a contract between the local governmental entity and vendor has been executed; or
      - (ii) the local governmental entity is considering entering into a contract with the vendor; or has a family relationship with the local government officer.
- (a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:
  - (1) a political contribution as defined by Title 15, Election Code; or
  - (2) food accepted as a guest.
- (a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

38. Debarment and Suspension (Executive Orders 12549 and 12689)

The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted

programs under Executive Orders 12549 (1986) and 12689 (1989). The term “principal” for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

39. H.U.D. Section 135.38 Section 3 Clause

§135.38 Section 3 clause;

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

F. Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible



(i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

40. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**41. [For Contracts that exceed \$100,000] Anti-Lobbying**

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

**42. [For Contracts > \$100K] Overtime Requirements**

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.

**43. [For Contracts > \$150K] Clean Air Act and the Federal Water Pollution Control Act**

The Contractor or subcontractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**44. Equal Opportunity Clause [applicable to contracts and subcontracts over \$10,000].**

**The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal

opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

During the performance of this contract, the Contractor agrees as follows:

(a.) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b.) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (c.) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (d.) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e.) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f.) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g.) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (h.) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

45. Section 109 of the Housing and Community Development Act of 1974.

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

46. Section 504 Rehabilitation Act of 1973, as amended.

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

47. Age Discrimination Act of 1975.

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**If this Contract is greater than \$100,000, include the following Section 3 language:**

48. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- (a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- (e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.



(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

49. Contract Documents and Drawings

Webb County will furnish the Contractor without charge Three (3) copies of the Contract Documents, including Technical Specifications and Drawings (See Exhibit "D". Additional copies requested by the Contractor will be furnished at cost.

50. Contract Period: The **BASE BID** Scope of Work for the drilling and completion of **Mirando City Water Well #4** and the work to be performed under this contract shall commence within the time stipulated by Webb County in the Notice to Proceed, and shall be fully completed within **NINETY (90) CONSECUTIVE CALENDAR DAYS THEREAFTER.**

**In the event that Webb County elects to use Option "A"/Alternative Bid No. 5, to drill and complete Mirando City water well #5,** to comply with TCEQ minimal 35 g.p.m. flow rates, then in that event the contract shall commence within the additional contract time stipulated by Webb County in Option "A" for the drilling and completion of Well #5 from the receipt of Webb County's Official Notice to Proceed.

If Option "A" is elected to be used by Webb County, Alsay, Inc., as the General Contractor will be notified in writing and the contract amount shall be increased in the additional sum of **TWO HUNDRED SEVENTY FIVE THOUSAND, SEVEN HUNDRED FORTY AND NO/100 DOLLARS (\$275,740.00).**

**If Option "A" is needed to drill and complete Well #5, the new combined total contract price shall be \$642,600.00\*\*\* (Base Bid (Well #4 \$366,860.00) + Option "A" Alternative Bid for Well #5 \$275,740.00),**

**Option "A" Additional Contract Period:** If Option "A" is selected as needed by Webb County, Alsay, Inc, Mirando City Water Well #5 shall be fully completed within the time frame stipulated by Webb County in the Notice to Proceed, for Well #5, and shall be fully completed within **SIXTY (60) CONSECUTIVE CALENDAR DAYS THEREAFTER.**

51. Liquidated Damages: Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to Webb County the sum of Five Hundred Fifty Dollars (\$550.00) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

52. Payment and Performance Bonds: A Performance Bond is required by Webb County for any construction work if the contract is in excess of **\$50,000** and in addition a Payment Bond shall be also required if a construction contract is in excess of \$25,000 in statutory compliance with applicable provisions of the Texas Government Code.

**Contractor shall supply the required Performance/Payment bonds to the Webb County Civil Legal Department Director within five (5) days of execution of this Agreement or not later than Two (2)**

**working days prior the date of the scheduled pre-construction meeting which shall be the "DEADLINE" for compliance herewith and which both parties have mutually agreed to as an "Express Condition Precedent" to this contract.**

**\*\*If Option "A" is elected to be used by Webb Co., the Contractor shall be given an additional time period of Sixty (60) consecutive days to drill and complete the one (1) additional water well #5, and the additional Sixty (60) day time for completion of Option "A" shall commence within three (3) calendar days after **\*\*Webb County's receipt and verification and approval of same by the Webb County Risk Dept., Civil Legal Dept., Webb County Engineer, and the Webb County Economic Development Director of the increased and updated Performance and Payment bonds and insurance coverages in the new total amount \$642,600.00\*\*** (Base Bid (Well #4 \$366,860.00) + Option "A" Alternative Bid for Well #5 \$275,740.00).**

Bonds must be issued by companies authorized and admitted to do business in the State of Texas and rated rated "A:-VII" or better by A.M. Best Company (Best's Key Rating Guide, current Edition, and as amended) and/or otherwise acceptable to the Owner.

**\*\* THE NOTICE TO PROCEED SHALL NOT BE ISSUED TO THE CONTRACTOR BY WEBB COUNTY WITHOUT THE DELIVERY OF ALL STATUTORILY REQUIRED PERFORMANCE AND/OR PAYMENT BONDS AND/OR PROOF OF ALL REQUIRED INSURANCE POLICIES TO WEBB COUNTY BY CONTRACTOR AS PER SECTION 7 "NOTICES" NOT LATER THAN TWO (2) WORKING DAYS PRIOR THE DATE OF THE SCHEDULED PRE-CONSTRUCTION MEETING "DEADLINE". IF THE CONTRACTOR FAILS TO PROVIDE SAID BONDS OR INSURANCE POLICIES BY THE DEADLINE SHALL CONSTITUTE A DEFAULT OF YOUR CONTRACT AND WEBB COUNTY SHALL AT THEIR SOLE OPTION AWARD THE CONTRACT TO THE NEXT LOWEST BIDDER OR RE-ADVERTISE THIS PROJECT FOR NEW BIDS/PROPOSALS.\*\***

53. Relationship of the Parties: Contractor is engaged under this Agreement as an "INDEPENDENT CONTRACTOR" and not as an agent or employee of Owner. Contractor is not entitled to benefits of any kind to which Owner's employees are entitled, including but not limited to unemployment compensation, workers' compensation, health insurance, or retirement benefits. Contractor assumes full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to, unemployment insurance, social security, Medicare, and income taxes with respect to Contractor and Contractor's employees. This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, or in the name of, or on behalf of the other party.

54. Successors and Assigns: This Agreement may not be assigned or subcontracted, in full or in part, by either party without first obtaining written consent of the other party. The parties shall not be relieved of its full responsibility for completion of work because of subletting of any portion of the work. This Agreement shall be binding upon and shall ensue to the benefit of the parties hereto and their respective successors, transferees, and assigns.

55. Indemnity: CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD OWNER HARMLESS FROM ANY AND ALL LOSS, EXPENSE, COST, OR LIABILITY (INCLUDING REASONABLE LEGAL FEES AND EXPENSES), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CONDUCT OF CONTRACTOR'S EMPLOYEES AND/OR ANY ACTS PERFORMED UNDER THIS CONTRACT AND THAT RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION OF THE

CONTRACTOR OR OF ANY PERSON EMPLOYED BY THE CONTRACTOR. IN CASE OF ANY SUCH CLAIM, CONTRACTOR, UPON NOTICE FROM OWNER, COVENANTS TO DEFEND ANY SUCH ACTION OR PROCEEDING. THE CONTRACTOR SHALL ALSO SAVE AND HOLD HARMLESS THE OWNER FROM AND AGAINST ANY AND ALL EXPENSES, COURT COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES THAT MIGHT BE INCURRED IN LITIGATION OR OTHERWISE DEFENDING OR PROSECUTING THE CLAIMS.

Webb County as Owner does not waive any rights to assert and/or claim any and all sovereign and/or governmental immunity defenses it may have as a governmental entity with regards to any and all damages, claims and/or losses resulting and/or related to this work, contract or other such agreements, use and/or possession of the Equipment. Nothing herein is intended to, or shall be construed as a waiver of any sovereign and/or governmental immunity claims and/or defenses by Webb County, as Owner. Nothing herein is intended to, or shall be construed as a waiver of any rights or claims that Webb County as the Owner may have against the manufacturer or distributor of the equipment being purchased and/or leased (as applicable).

**56. Compliance with Laws:** Contractor agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities, including, but not limited to, those pertaining to safety, and shall obtain all licenses, registrations, or other approvals required in order to fully perform its obligations hereunder. Contractor represents and warrants that all improvements made to the property shall comply with the Americans with Disabilities Act (ADA) and all other applicable Federal/State Codes, regulations, and laws.

**57. Severability:** Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Texas, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

**58. Governing Law/Venue:** This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas without regard to choice of law rules of any jurisdiction. The parties hereby further agree that for any litigation regarding this agreement that venue lies exclusively in Webb County, Texas.

**59. Default and Termination:** In the event either party interferes with the general progress of this Project intentionally, or by negligence, or intentional or negligent delay, the non-defaulting party may complete the same or cause the same to be completed and charge all sums of money so expended for the completion of this Agreement against the defaulting party, and the defaulting party shall reimburse the non-defaulting Party for any loss sustained thereby.

**60. Attorney's Fees:** In the event either party breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees incurred by such other party.

**61. Entire Agreement:** This Agreement and its Exhibits shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, agreements, promises or statements, either oral or written, by and between the parties. Any modifications to this Agreement must be in writing and signed by the party sought to be bound.

**62. Additional Exhibits:** The following exhibits/documents are attached hereto and fully incorporated herein by reference and made a part of this agreement as if fully set forth herein:

1. Form 1295-Texas Ethics Commission Disclosure of Interested Parties. **Exhibit “C”**, p. 328.
2. Bid Bond from ALSAY, INC. – **Exhibit “C”**, p. 328.
3. HUD 4010-Appendix F/Fair Labor Standards/Davis-Bacon Act, Copeland “Anti-Kickback” Act/Contract Work Hours and Safety Standards Act-**Exhibit “E”**, p. 466
4. Davis-Bacon Prevailing Wage Determination-**Exhibit “F”**, p. 468.
5. Payment Bond (To be provided by Contractor Prior to Issuance of Notice to Proceed). (See Section 52\*\*), **Exhibit “G”**, page 473.
6. Performance Bond (To be provided by Contractor Prior to Issuance of Notice to Proceed). (See Section 52\*\*), **Exhibit “H”**, p.475
7. Insurance Coverages, Liability, Worker’s Comp., Builder’s Risk, etc. (To be provided by Contractor Prior to Issuance of Notice to Proceed), **Exhibit “I”**, p.477.
8. Contractor’s Local Opportunity Plan.- **Exhibit “J”**, p.478.
9. Contractor’s Non-Collusion Affidavit. - **Exhibit “K”**, p.480.
10. Webb County’s General Conditions, **Exhibit “L”**, p. 481.

63. **OMISSIONS:** If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any portion of this Agreement shall be omitted here-from, then it is hereby declared that such omission was unintentional and that the omitted element shall be included in order to give meaning, validity, and/or effect to any portion of this Agreement.

64. **MATERIALMEN/SUPPLIERS:** Contractor within 10 days from the date of the execution of this agreement shall provide an updated and current listing of all Subcontractors and/or Materialmen or Suppliers, and all laborers, used by the Contactor to Webb County and Contractor shall notify the Owner in writing whenever changes occur, and Contractor shall provide the Owner with an updated listing within FIVE (5) working days of upon request for an updated listing. Contractor will immediately notify the Owner in writing of any Subcontractors and/or Materialmen or Suppliers, and all laborers, independent contractors, and/or other such materialmen and/or suppliers services that are discontinued and/or that have been added to their workforce.

65. **REQUEST FOR PAYMENT SUBMISSION:** All request for payments are to be made payable to Contractor by dated and signed invoice(s). Said invoice and/or request for progress payments shall be submitted in writing to both **James Flores, Director, Webb County Economic Development Dept./Community Action Agency** and **Luis Perez-Garcia, P.E., Webb County Engineer, Webb County Engineering Dept., the Project Engineer for Webb County** its’ designated and authorized representative, on behalf of Owner for review and approval of same. Upon review and approval of the request for payment by James Flores, Director, Webb County Community Action Agency and **Luis Perez-Garcia, P.E., Webb County Engineer, Webb County Engineering Dept., the Project Engineer** on behalf of Owner, the Webb County Engineer shall then forward the approved request for the payment amount [**less Five percent (5%) retainage**] to the Webb County Business Office to process the progress payment

request. Payment will be mailed to Contractor or made available for pick up at the Webb County Business Office.

66. **COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:** Contractor agrees to comply at all times with all federal, state, county, and/or City of Laredo building, development codes, city building permits, rules, regulations, ordinances and laws, and Contractor shall not permit the Premises or any part thereof to be used for (a) any offensive, noisy, or dangerous activity that would pose a health or safety risk; (b) the creation or maintenance of a public nuisance, (c) anything which is against public regulations or rules of any public authority at any time applicable to the Premises; or (d) any purpose or any manner which will obstruct, interfere with, or infringe on the rights of other tenants or adjoining properties.

67. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

68. **AMENDMENT:** No amendment, modification, or alteration of the terms of this Agreement hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and approved by the Webb County Commissioner's Court and duly executed by both of the parties hereto.

69. **TIME OF ESSENCE:** Time is of the essence of this Agreement and each and every covenant, condition, and provision herein contained.

70. **ADDITIONAL PROVISIONS:**

**Inconsistencies.** Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

**Entire Agreement.** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.

**Confidentiality.** Any confidential information provided to or developed by Consultant in the performance of this Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual or organization without the prior approval of **WEBB COUNTY**.

**Headings.** The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

**Waiver.** The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

**Consequential Damages.** Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, will-full misconduct, negligent act or omission, or other wrongful act of either of them.

**Counterparts.** This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

**Terminology and Definitions.** All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

**Rule of Construction.** The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

THIS AGREEMENT BECOMES EFFECTIVE WHEN SIGNED BY THE LAST PARTY WHOSE SIGNING MAKES THE AGREEMENT FULLY EXECUTED.

### **ATTORNEY'S REVIEW CERTIFICATION**

I, the undersigned, RAY RODRIGUEZ, the duly authorized and acting legal representative and Asst. General Counsel of Webb County, Texas, and do hereby certify as follows:

I have examined the attached contract(s), and the payment and performance surety bonds and I am of the opinion that each of the agreements may be duly executed by the proper parties, acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties; and that the agreements shall constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Attorney's Signature: /S/ RAY RODRIGUEZ  
R.H. "RAY" RODRIGUEZ, JR.  
Asst. Gen. Counsel  
Webb County Civil Legal Division  
Texas State Bar Number: 17148525