

COMMISSIONERS COURT MINUTES, REGULAR SESSION, JANUARY 8, 2024

The Terrell County Commissioners Court met on Monday, the 8<sup>th</sup> day of January 2024, at 9:00 A.M. in the commissioner’s courtroom of the county courthouse in the city of Sanderson, Texas. Notices of the meeting place were timely posted at a site readily accessible to the general public at all times. They remained posted for at least seventy-two hours preceding the scheduled time of this meeting, in compliance with the Open Meetings Act.

The Hon. Dale Carruthers, County Judge, called the meeting to order. The following members of this Court and Officers of the County were present:

Hon. Adam Johnson	Commissioner Pct. 1
Absent	Commissioner Pct. 2
Hon. Arnulfo Serna	Commissioner Pct. 3
Hon. Gene Chavez	Commissioner Pct. 4
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Hon. Raeline Thompson	County and District Clerk
Pamela Blaylock	County Deputy Treasurer
Hon. Kenneth Bellah	County Attorney
Hon. Thaddeus Cleveland	County Sheriff

Commissioner Johnson gave the Invocation and led the commissioner’s court in the Pledge of Allegiance to the United States flag, followed by the Pledge of Allegiance to the Republic of Texas Flag.

**Public Comments on Agenda Items** – Leila Cash commented on agenda line item 24 she stated that the Judge cannot be on the checking accounts because commissioner court is responsible for checks and balances. Monique Lacroix commented on agenda line items 18, 21 and 5 concerned about maintenance on county roads, bank account for sheriff office should turn in invoices before payment and why maintainer on private property in Indian Creek. Ruben stated that private property they have been given permission for material for the county roads.

**Minutes from previous meetings** – Commissioner Johnson motioned to approve the minutes for December 11, 2023, Regular Session, December 15, 2023, Special Session and the January 2, 2024, Special Session. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Brewster County gifted Terrell County a Maintainer** – The Commissioner Court thanked Judge Greg Henington from Brewster County for the maintainer and pictures were taken of the Commissioners with Judge Greg Henington. No Action.

**Approve Invoice from Sterling McCall Ford for TDHCA CDBG CRP Ambulance Project** – Commissioner Serna motioned to approve the invoice for \$67,520.00 from Sterling McCall Ford for TDHCA CDBG CRP Ambulance Project for 2023 Ford F-450 Diesel Chassis. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Approve Invoice from Esser & Company Consulting LLC for the CDBG Contract CFA 22-0033 Fire Truck Grant** – Commissioner Serna to approve the invoice for \$27,000.00 (no cost to the County) from Esser & Company Consulting LLC for the CDBG Contract CFA 22-0033 Fire Truck Grant. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Presentation by Esser & Company Consulting LLC Section 3 Goals of the CDBG Program for Terrell County CDBG CFA 22-0033 Fast Fund Project** – Commissioner Serna approved the presentation on Section 3 Goals of the CDBG Program for Terrell County CDBG CFA 22-0033 Fast Fund Project. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Approve Invoice from Esser & Company Consulting LLC for the CDBG Contract CFC 21-0464 Water Well, Water Tank, Booster Station Project** – Commissioner Chavez motioned to approve the invoice for \$34,000.00 (no cost to the County) from Esser & Company Consulting LLC for the CDBG Contract CFC 21-0464 Water Well, Water Tank, Booster Station Project. Commissioner Serna seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Approve Invoice from Esser & Company Consulting LLC for the CDBG Contract CFC 22-0099 Waterline Replacement Project** – Commissioner Serna motioned to approve the invoice for \$24,000.00 (no cost to the County) for the CDBG Contract CFC 22-0099 Waterline Replacement Project. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Review Status of CDBG Contract CFC 23-0094 Generators and Water line to Wastewater Treatment Plant** – Commissioner Serna motioned to accept the one-million-dollar grant status of the CDBG Contract CFC 23-0094 on Generators and Water line to the Wastewater Treatment Plant. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Review Status of CDBG Contract CDV 23-0095 Senior Citizen Center Project** – Commissioner Johnson motioned to accept the awarded grant sum of \$500,000.00 from the CDBG Contract CDV 23-0095 Senior Citizen Center Project. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Resolution Adopting Civil Rights Policies for 2024 CDBG Program** – Commissioner Chavez motioned to approve the Resolution Adopting Civil Rights Policies for 2024 CDBG Program for two years. Commissioner Serna seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

#### **RESOLUTION No. 2024-01 Regarding Civil Rights**

#### **Terrell County, Texas**

Whereas, Terrell County, Texas, (hereinafter referred to as “Terrell County” has been awarded TxCDBG funding through a TxCDBG grant from the Texas Department of Agriculture (hereinafter referred to as “TDA”);

Whereas, Terrell County, in accordance with Section 109 of the Title I of the Housing and Community Development Act. (24 CFR 6); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and for construction contracts greater than \$10,000, must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the CDBG activity, on the basis of race, color, religion, sex, national origin, age, or disability;

Whereas, Terrell County, in consideration for the receipt and acceptance of federal funding, agrees to comply with all federal rules and regulations including those rules and regulations governing citizen participation and civil rights protections;

Whereas, Terrell County, in accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR Part 75, is required, to the greatest extent feasible, to provide training and employment opportunities to lower income residents and contract opportunities to businesses in the Section 3 Service Area;

Whereas, Terrell County, in accordance with Section 104(1) of the Housing and Community Development Act, as amended, and State’s certification requirements at 24 CFR 91.325(b)(6), must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations;

Whereas, Terrell County, in accordance with Executive Order 13166, must take reasonable steps to ensure meaningful access to services in federally assisted programs and activities by persons with limited English proficiency (LEP) and must have an LEP plan in place specific to the locality and beneficiaries for each TxCDBG project;

Whereas, Terrell County, in accordance with Section 504 of the Rehabilitation Act of 1973, does not discriminate on the basis of disability and agrees to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds; and

Whereas, Terrell County, in accordance with Section 808(e)(5) of the Fair Housing Act (42 USC 3608(e)(5)) that requires HUD programs and activities be administered in a manner affirmatively to further the policies of the Fair Housing Act, agrees to conduct at least one activity during the contract period of the TxCDBG contract, to affirmatively further fair housing;

Whereas, Terrell County, agrees to maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

NOW, THEREFORE, BE IT RESOLVED BY THE TERRELL COUNTY COMMISSIONERS COURT OF TERRELL COUNTY, TEXAS that:

Terrell County REAFFIRMS/ADOPTS the following policies:

1. Citizen Participation Plan and Grievance Procedures (Form A1013);
2. Excessive Force Policy (Form A1003);
3. Fair Housing Policy (Form A1015).
4. Section 504 Policy and Grievance Procedures (Form A1004); and
5. Code of Conduct Policy (Form A1002).

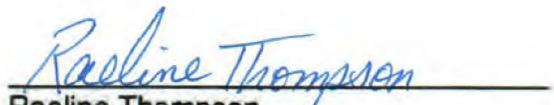
Terrell County affirms its commitment to conduct a project-specific analysis and take all appropriate action necessary to comply with program requirements for the following:

6. Section 3 economic opportunity;
7. Limited English Proficiency; and
8. Activity to affirmatively Furth Fair Housing choice.

**Passed and approved this 08<sup>TH</sup> day of Janaury 2024.**



Dale Carruthers  
Terrell County Judge  
Terrell County, Texas



Raeline Thompson  
Terrell County Clerk  
Terrell County, Texas

**Architectural Services Contract for Senior Citizen Center CDBG CDV 23-0095** – Commissioner Serna motioned to approve Davis Powell Architecture, pending Hon. Bellah’s approval, the fee of \$39,500.00 (no cost to the County) for the architectural services contract for the Senior Citizen CDBG CDV 23-0095. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

Honorable Dale Carruthers  
Terrell County Judge  
105 E. Hackberry  
Sanderson, Texas 79848

Re: Proposed Scope of Work and Fee for Architectural and Engineering Services  
Senior Center in Sanderson, TX

Dear Judge Carruthers,

Please review the following proposed Scope of Work and Fee for the Senior Center in Sanderson, TX

**Proposed Scope of Work:**

- Topographical Survey of area of work (\$4,500)
- Geotechnical Investigation and report (\$5,000)
- Site Plan and Site Details (\$6,000)
- Building Plan, Elevations, Sections, Details, and Specifications (\$9,000)
- Computer generated rendering of exterior of proposed building (\$1,000)
- Structural Engineering (\$5,000)
- Mechanical, Electrical, and Plumbing Engineering (\$5,000)
- Construction Administration including: (\$4,000)
- Assist in bidding and award of contract for abatement and demolition
- Assist in bidding and award of contract for construction
- Observe Construction and provide monthly reports to County Judge or representative
- Develop Punch list of project defects
- Monitor warranty items for 1 year
- Texas Accessibility Plan Review and Inspection
- Printing Costs (10 Sets of 24x36 prints to be provided for bidding and permitting.)

**Proposed Fee:**

The estimated new construction cost for this project \$423,000.00. Our proposed fee is **\$39,500.00**.

If this scope of work and fee is acceptable, we will provide a formal agreement form.

Thank you for any consideration given this proposal. Please call 830-757-6750 with any questions.



Davis Powell, Architect

**Presentation by Esser & Company Consulting LLC Section 3 Goals CDBG Program for Terrell County CDV 23-0095 Community Development Fund Senior Citizen Center** – Commissioner Serna motioned to approve the Section 3 Goals CDBG Program for Terrell County CDV 23-0095 Community Development Fund Senior Citizen Center and keep track of the labor hours. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Presentation by Esser & Company Consulting LLC Section 3 Goals CDBG Program for Terrell County CFC 23-0094 Colonia Fund Construction Water Improvements** – Commissioner Serna motioned to approve the Section 3 Goals CDBG Program for Terrell County CDV 23-0094 Colonia Fund Construction Water Improvements and keep track of the labor hours. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Check Presentation by Esser & Company Consulting LLC to Terrell County Commissioners Court** – Pictures of the checks presented in Commissioners Court – Pumper Brush Fire Truck \$688,388.00; Senior Citizen Building \$500,00.00 and Generators Water Tank waterline \$1,000,000.00. No Action.

**Scheduling Final Public Hearing for CDBG Contract CFC 21-0464 for March 11, 2024, at 5:15 p.m.** – Commissioner Chavez motioned to schedule the final Public Hearing for CDBG Contract CFC 21-0464 for March 11, 2024, at 5:15 p.m. Commissioner Johnson seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Burgess & Niple Engineering Contract for CFC 23-0094** – Commissioner Serna motioned to accept the Burgess & Niple Engineering Contract for CFC 23-0094. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, entered into this 8TH day of JANUARY, 2024 by and between **TERRELL COUNTY, TEXAS**, hereinafter called the "COUNTY", and **BURGESS & NIPLE, INC.**, hereinafter called "FIRM",

WITNESSETH THAT:

WHEREAS, **TERRELL COUNTY, TEXAS** desires to **PERFORM WATER DISTRIBUTION SYSTEM IMPROVEMENTS** under the general direction of the Texas Community Development Block Grant (hereinafter called "TxCDBG") Program administered by the Texas Department of Agriculture (TDA); and Whereas the COUNTY desires to engage **BURGESS & NIPLE, INC.**, to render certain engineering services related to TxCDBG Project, Contract Number **CFC-2023-0094**.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services - The FIRM will perform the services set out in Part II, Scope of Services.
2. Time of Performance - The services of the FIRM shall commence on **THE CONTRACT START DATE OR THE PREFUNDING AGREEMENT DATE BEWTEEN THE COUNTY AND THE TEXAS DEPARTMENT OF AGRICULTURE**. In any event, all of the services required and performed hereunder shall be completed no later than **JANUARY 8th, 2026** or the project's administrative closure date, as defined by Department, whichever is later.
3. Local Program Liaison - For purposes of this Agreement, the **COUNTY JUDGE** or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the FIRM. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - 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 the COUNTY, or any of their authorized representatives, shall have access to any documents, papers, or other records of the FIRM which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the COUNTY's TxCDBG contract with TDA.
5. Retention of Records - The FIRM shall retain all required records for three years after the COUNTY makes its final payment and all pending matters are closed.
6. Compensation and Method of Payment
  - a. The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **\$105,000.00**. Payment to the FIRM shall be based on the conditions of Part III - Payment Schedule of this Agreement.

- b. COUNTY agrees to promptly pay FIRM at their office in COLUMBUS, OHIO, the full amount of each such invoice upon receipt.
- c. In the event the COUNTY does not receive timely reimbursement from the grantor agency for FIRM's invoiced costs that are wholly compliant with federal, state and TxCDBG program requirements, COUNTY shall promptly pay the outstanding invoice amounts or a late fee of \$25.00 will be assessed and interest on the unpaid amounts will accrue at 3% per annum starting 90 days after the date of the invoice. Late fees and interest accrued are not program eligible costs and wholly the responsibility of the COUNTY.
- d. In the event legal action is necessary to enforce the payment terms of this Agreement, the FIRM shall be entitled to collect from the COUNTY any judgement or settlement sums due, plus reasonable attorneys' fees, court costs and other expenses incurred by the FIRM in connection therewith and, in addition, the reasonable value of the FIRM's time and expenses spent in connection with such collection action, computed according to the FIRM's prevailing fee schedule and expense policies.

7. Indemnification

- a. The FIRM shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the COUNTY and its agency members from and against any and all claims, costs, suits, and damages, including attorney's fees, arising out of the FIRM's negligent performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.
- b. The COUNTY shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the FIRM and its officers, directors, employees and sub-consultants from and against any and all claims, costs, suits, and damages, including attorney's fees, arising out of the COUNTY's negligent performance or nonperformance of the activities, services or subject matter in connection with the Project and the acts of its contractors, subcontractors or anyone for whom the COUNTY is legally liable.
- c. Neither the COUNTY nor the FIRM shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

8. **LIABILITY LIMITATION – TO THE FULLEST EXTENT PERMITTED BY LAW, THE COUNTY AGREES THAT THE FIRM'S TOTAL LIABILITY TO THE COUNTY SHALL BE LIMITED TO \$50,000.00 OR THE TOTAL AMOUNT OF COMPENSATION RECEIVED BY THE ENGINEER, WHICHEVER IS GREATER.**

9. Opinions of Probable Construction Costs - Opinions of probable construction costs prepared by the FIRM represent his best judgement as a design professional familiar with the construction industry. It is recognized, however, that the FIRM has no control over the cost of and availability of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding or market conditions. Accordingly, the FIRM cannot and does not guarantee that bids will not vary from any opinions of probable construction cost prepared by him.

10. Construction Site Visits

- a. Construction Site Visits and observation are not intended to be an exhaustive check or a detailed inspection of the contractor's work but rather to allow the FIRM to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with Contract Documents.
  - b. The FIRM shall not supervise, direct or have control over the contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the contractor, subcontractor, any entity performing any portions of the work, or any agents or employees of any of them. The FIRM does not guarantee the performance of the contractor and shall not be responsible for the contractor's failure to perform its work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.
11. Rejection of Work - The FIRM shall have the authority to reject any work that is not, in the judgement of the FIRM, in conformance with the Construction Documents or work plans. Neither this authority nor the FIRM's good-faith judgement to reject or not reject any work shall subject the FIRM to any liability or cause of action to the contractor, subcontractors or any other suppliers or persons performing work.

12. Record Documents - Record Documents prepared for this project shall incorporate field changes, addenda, change orders and other data furnished by the contractor for work performed. Because these Record Documents are based on unverified information provided by other parties, which the FIRM shall assume will be reliable, the FIRM cannot and does not warrant their accuracy.

13. Hazardous Material

a. As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site.

b. The COUNTY agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the FIRM, its officers, partners employees and consultants (collectively, FIRM) from and against any and all claims, suits, demands, liabilities, losses, damages, or costs, including reasonable attorneys' fees and defense cost arising out of or in any way connected with the detection, presence, handling, removal, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the FIRM.

14. Suspension of Services

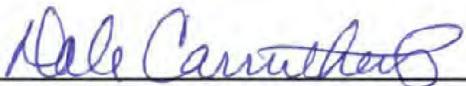
- a. If the project or the FIRM's services are suspended by the COUNTY for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the FIRM shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the COUNTY shall compensate the FIRM for expenses incurred as a result of the suspension and resumption of its service, and the FIRM's schedule and fees for the remainder of the Project shall be equitably adjusted.
- b. If the FIRM's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the FIRM may terminate this Agreement upon giving not less than five (5) calendar day's written notice to the COUNTY.
- c. If the COUNTY is in breach of the payment terms or otherwise is in material breach of this Agreement, the FIRM may suspend performance of services upon five (5) calendar days' notice to the COUNTY. The FIRM shall have no liability to the COUNTY, and the COUNTY agrees to make no such claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the COUNTY. Upon receipt of payment in full of all outstanding sums due from the COUNTY or curing of such other breach which caused the FIRM to suspend services, the FIRM shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.
- d. Both parties acknowledge that the FIRM's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the FIRM or any other party encounters any hazardous or toxic materials, or should it be known to the FIRM that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the FIRM's services, the FIRM may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the COUNTY retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

15. Miscellaneous Provisions

- a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in **TERRELL COUNTY, TEXAS.**
- b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
- c. In any case one or more of the provisions contained in this 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.
- d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled. In the event of a non-judicative settlement of litigation between parties or a resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.
- e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.

16. Extent of Agreement - This Agreement, which includes Parts I-IV, represents the entire and integrated agreement between the COUNTY and the FIRM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both COUNTY and the FIRM.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY:   
 (Local Official)  
 \_\_\_\_\_  
 The Honorable Dale Carruthers  
 (Printed Name)  
 \_\_\_\_\_  
 County Judge  
 (Title)

BY:   
 (FIRM's Authorized Representative)  
 \_\_\_\_\_  
 William D. Wendland  
 (Printed Name)  
 \_\_\_\_\_  
 Vice President  
 (Title)

**PART II  
SCOPE OF SERVICES**

The FIRM shall render the following professional services necessary for the development of the project:

**SCOPE OF BASIC SERVICES:**

- 1. Attend preliminary conferences with the COUNTY regarding the requirements of the project.
- 2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWs) for the TxCDBG project and, if applicable, furnish to the COUNTY:

- a. Name and address of property owners;
  - b. Legal description of parcels to be acquired; and
  - c. Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the COUNTY providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The FIRM will review any tests required and act as the COUNTY's representative in connection with any such services.
  4. Prepare highway permits.
  5. Prepare a preliminary engineering study and/or report if required as a part of plan/specification submission for review by appropriate regulatory agency(ies).
  6. Furnish the COUNTY two copies of the preliminary report, if applicable (additional copies will be furnished to the COUNTY at direct cost of reproduction).
  7. Make periodic visits, no less than every 30 days during the construction period, to the construction site to observe the progress and quality of the work, to ensure that the work conforms with the approved plans and specifications, and to determine if the work is proceeding in accordance with the Agreement.
  8. Furnish the COUNTY a written monthly status report at least seven (7) days prior to a regularly scheduled commissioner's court meeting until the project is closed by TDA.
  9. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
  10. Prepare bid packet/contract documents/advertisement for bids. At the time, the bid packet is completed, the FIRM shall also furnish to the COUNTY an updated written Estimate of Probable Costs for the Project.

11. Coordinate with Grant Administrator to confirm the Grant Administrator has made the labor and wage rates 10-day call.
12. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
13. Conduct bid opening and prepare minutes.
14. Tabulate, analyze, and review bids for completeness and accuracy.
15. Coordinate with Grant Administrator to confirm the Grant Administrator has determined the construction contractor's eligibility verification through [www.SAM.gov](http://www.SAM.gov).
16. Conduct pre-construction conference and prepare copy of report/minutes.
17. Issue Notice to Proceed to construction contractor.
18. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
19. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.

20. Use TDA-approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
21. Consult with and advise the COUNTY during construction; issue to contractors all instructions requested by the COUNTY; and prepare routine change orders if required, at no charge for engineering services to the COUNTY when the change order is required to correct errors or omissions by the FIRM; provide price analysis for change orders; process change orders approved by COUNTY and the FIRM and submit to TDA for approval prior to execution with the construction contractor.
22. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
23. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.
24. Based on the FIRM's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the COUNTY, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.

25. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the COUNTY and approval by TDA, unless State or local law provides otherwise.
26. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
27. Conduct interim/final inspections.
28. Revise contract drawings to show the work as actually constructed, and furnish the COUNTY with a set of "record drawings" plans.
29. The FIRM will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the FIRM shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the COUNTY. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

#### **ADDITIONAL AND SPECIAL SERVICES**

All work performed by FIRM which is either described in this section or not included in the Scope of Basic Services defined above, shall constitute Additional Services. These shall include:

1. Travel and subsistence to points other than FIRM's or COUNTY's offices and project site;
2. Copies of construction documents in excess of three (3) sets;

3. Revisions to substantially completed construction documents or approved preliminary documents occasioned by changes in scope of work;
4. Soil boring, soil, mill, shop and laboratory tests;
5. Expense of Field Surveys, construction staking and related office computations and drafting;
6. Construction observation and/or Resident Project Representative Services;
7. Special reports or studies, property maps, plats, reparation of environmental statements, applications for permits or grants, appearances before regulatory agencies, and required filing fees;

8. Services as an expert witness including preparation of engineering data and reports on behalf of the COUNTY or in connection with litigation or other controversies, or in consultation with COUNTY or attorneys;
9. Renderings, exhibits or scale models;
10. Additional or extended services during construction made necessary by work damaged by fire or other cause during construction; defective or neglected work of Contractor; prolongation of construction contract time by more than 20%, acceleration of work schedule involving services beyond normal working hours; or default under construction contract due to delinquency or insolvency;
11. Services made necessary by the default of the contractor or COUNTY under the Contract for Construction or by deficiencies, defects or delays in the work by the contractor;
12. Services after issuance of Certificate of Completion;
13. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by COUNTY;
14. Other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted engineering practice

### **SUBCONTRACTS**

1. No work under this Agreement shall be subcontracted by the FIRM without prior approval, in writing, from the COUNTY.
2. The FIRM shall, prior to proceeding with the work, notify the COUNTY in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the COUNTY determines that any subcontractor is incompetent or undesirable, the COUNTY will notify the FIRM who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the COUNTY.
4. The FIRM will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance 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). The provisions shall require reporting of violations to TDA and to the Regional Office of the Environmental Protection Agency (EPA).
5. The FIRM will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances

where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

6. The FIRM will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the COUNTY including the manner by which it will be effected and the basis for settlement.
7. The FIRM will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
  - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
  - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
  - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
  - d. Section 3 of the Housing and Urban Development Act of 1968;
  - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - f. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5).
8. The FIRM will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
9. The FIRM will include in all negotiated contracts and subcontracts a provision to the effect that the COUNTY, TDA, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. The FIRM will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the COUNTY has made final payment to the contractor and all other pending matters are closed.

### **STANDARD OF PERFORMANCE AND DEFICIENCIES**

1. All services of the FIRM and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The FIRM represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.
2. The FIRM represents that services provided under this Agreement shall be performed within the limits prescribed by the COUNTY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.

3. Any deficiency in FIRM's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from COUNTY and at the FIRM's expense if the deficiency is due to FIRM's negligence. The COUNTY shall notify the FIRM in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the COUNTY under applicable state or federal law.
4. The FIRM agrees to and shall hold harmless the COUNTY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the FIRM, its officers, agents, employees, subcontractors, and others acting for or under the direction of the FIRM doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.

**EXCLUDED SERVICES** Services not set forth above as Scope of Basic Services and not listed in Additional Services of this Agreement are specifically excluded from the scope of the FIRM'S services. The FIRM assumes no responsibility to perform any services not specifically listed in Basic Services or in Additional Services.

### PART III PAYMENT SCHEDULE

#### **BASIC SERVICES**

COUNTY shall reimburse the FIRM for professional services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

MILESTONE	% of Contract Fee	Value of Contract Fee
Submission of project criteria and limits for environmental review	5%	\$3,250.00
Approval of Preliminary Engineering Plans and Specifications by County	15%	\$9,750.00
Approval of Plans and Specifications by Regulatory Agency	30%	\$19,500.00
Completion of Bid Advertising and Contract Award	20%	\$13,000.00
Issuance of Construction Notice to Proceed and Engineer's Approval of first Construction Monthly Payment Estimate	10%	\$6,500.00
Engineer's Approval of final Construction Monthly Payment Estimate, Certificate of Construction Completion, and construction close out documentation.	15%	\$9,750.00
Submission of Record Drawings to County, completion of final inspection and acceptance by County.	5%	\$3,250.00
<b>TOTAL</b>		<b>\$65,000.00</b>

#### **SPECIAL AND ADDITIONAL SERVICES**

The fee for all Special and Additional Services shall not exceed a total of **FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00)**. Authorized Special and Additional Services include Resident Project Representative Services and surveying. Special and Additional Services shall be reimbursed under the following Schedule of Rates.

**The FIRM will invoice the COUNTY monthly in amounts based on FIRM's estimate of the portion of the Basic Services completed, plus charges for Additional Services performed.**

**BURGESS & NIPLE, INC.  
SCHEDULE OF RATES**

Effective January 1, 2024 - December 31, 2024  
Rates are subject to revision January 1 of each year

<u>Description</u>	<u>Hourly Rate*</u>
	<u>Minimum - Maximum</u>
Principals / Associates .....	\$200.00 - \$300.00/hr
Senior Project Manager (Eng VI) .....	\$180.00 - \$270.00/hr
Project Manager Professional Engineer (Eng V).....	\$150.00 - \$240.00/hr
Project Professional Engineer (Eng IV).....	\$130.00 - \$190.00/hr
Design Professional Engineer (Eng III).....	\$120.00 - \$170.00/hr
Design Engineer (Eng III).....	\$110.00 - \$150.00/hr
Engineer / EIT (Eng. II).....	\$100.00 - \$140.00/hr
Graduate Engineer (Eng I).....	\$90.00 - \$130.00/hr
Resident Project Representative - Senior.....	\$100.00 - \$130.00/hr
Resident Project Representative .....	\$90.00 - \$110.00/hr
Senior Computer Technician .....	\$100.00 - \$125.00/hr
Senior Technician .....	\$90.00 - \$120.00/hr
Field Data Technician - Senior .....	\$120.00 - \$160.00/hr
Field Data Technician .....	\$100.00 - \$140.00/hr
Technician.....	\$80.00 - \$110.00/hr
CADD Draftsman III - Senior.....	\$140.00 - \$180.00/hr
CADD Draftsman II .....	\$100.00 - \$150.00/hr
CADD Draftsman I.....	\$90.00 - \$120.00/hr
Clerical .....	\$80.00 - \$95.00/hr
Administrative Assistant.....	\$70.00 - \$85.00/hr
Mileage .....	IRS REIMBURSEMENT RATE

**\*Actual Hourly Rates are based upon experience level and expertise**

The FIRM shall be reimbursed the actual costs of necessary lodging, meals and incidental travel expenses related to providing special or additional services.

The FIRM shall be reimbursed the actual costs of miscellaneous out of pocket expenses related to providing special or additional services.

The FIRM shall be reimbursed the actual costs of reproduction related to providing special or additional services.

The FIRM shall be reimbursed the actual costs of necessary testing based on itemized billing statements from the independent testing laboratory, plus a **FIFTEEN** percent **(15%)** overhead charge.

The payment requests shall be prepared by the FIRM and be accompanied by such supporting data to substantiate the amounts requested.

Any work performed by the FIRM prior to the execution of this Agreement is at the FIRM's sole risk and expense.

**PART IV  
TERMS AND CONDITIONS**

**1. Termination of Agreement for Cause**

- a. If the FIRM fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the FIRM violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the COUNTY shall have the right to terminate this Agreement by giving written notice to the FIRM 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 FIRM pursuant to this Agreement shall, at the option of the COUNTY, be turned over to the

COUNTY and become the property of the COUNTY. In the event of termination for cause, the FIRM shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

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

## 2. Termination for Convenience of the COUNTY

- a. COUNTY may at any time and for any reason terminate FIRM's services and work at 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.

- b. Upon such termination, FIRM shall be entitled to payment only as follows:

- i. the actual cost of the work completed in conformity with this Agreement; plus,
- ii. such other costs actually incurred by Contractor as are permitted by the prime contract and approved by COUNTY; plus
- iii. ten percent (10%) of the cost of the work referred to in subparagraph (i) above for overhead and profit.
- iv. 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.
- v. Contractor shall not be entitled to any claim or claim of lien against COUNTY for any additional compensation or damages in the event of such termination and payment.

3. Changes. The COUNTY may, from time to time, request changes in the services the FIRM will perform under this Agreement. Such changes, including any increase or decrease in the amount of the FIRM's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.

4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, 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 administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. 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.

## 5. Personnel.

- a. The FIRM represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.
- b. All of the services required hereunder will be performed by the FIRM or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the COUNTY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability. The FIRM shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the COUNTY thereto; Provided, however, that claims for money by the FIRM from the COUNTY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the COUNTY.
7. Reports and Information. The FIRM, at such times and in such forms as the COUNTY may require, shall furnish the COUNTY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
8. Records and Audits. The FIRM shall insure that the COUNTY maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The FIRM and the COUNTY shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.
9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the FIRM under this contract are confidential and the FIRM agrees that they shall not be made available to any individual or organization without the prior written approval of the COUNTY.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the FIRM.

11. Compliance with Local Laws. The FIRM shall comply with all applicable laws, ordinances and codes of the State and local governments, and the FIRM shall save the COUNTY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
  - a. Governing Body. No member of the governing body of the COUNTY and no other officer, employee, or agent of the COUNTY, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the COUNTY, shall have any personal financial interest, direct or indirect, in the FIRM or this Agreement; 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 the COUNTY, shall have any personal financial interest, direct or indirect, in the FIRM or this Agreement; and the FIRM shall take appropriate steps to assure compliance.
  - c. The FIRM and Employees. The FIRM warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the COUNTY or this Agreement. The FIRM 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 the COUNTY or in any business, entity, organization or person that may benefit from the award. The FIRM further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Debarment and Suspension (Executive Orders 12549 and 12689) - The FIRM certifies, by entering into this Agreement, 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 Agreement 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 FIRM. The FIRM 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."

## **Federal Civil Rights Compliance**

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000). During the performance of this contract, the FIRM agrees as follows:

a. The FIRM will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The FIRM 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 FIRM 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 FIRM will, in all solicitations or advertisements for employees placed by or on behalf of the FIRM, 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 FIRM 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 FIRM 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 FIRM's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The FIRM 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 FIRM 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 FIRM'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 FIRM 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 FIRM 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 FIRM 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 FIRM becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the FIRM may request the United States to enter into such litigation to protect the interests of the United States.

15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

16. Section 109 of the Housing and Community Development Act of 1974. The FIRM 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.
17. Section 504 of the Rehabilitation Act of 1973, as amended. The FIRM 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.
18. Age Discrimination Act of 1975. The FIRM 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.
19. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000) The FIRM certifies 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 this contract. The FIRM shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
20. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns (if contract greater than or equal to \$100,000).
- 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.
  - The parties to this Agreement 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 Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
  - The FIRM agrees to send to each labor organization or representative of workers with which the FIRM has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the FIRM'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.
  - The FIRM 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 FIRM will not subcontract with any

subcontractor where the FIRM has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- e. The FIRM will certify that any vacant employment positions, including training positions, that are filled (1) after the FIRM 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 FIRM'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 Agreement 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 Agreement. 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).
21. Reporting Requirements - The Contractor shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).
22. Patent Rights - The Contractor shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).
23. Copyrights and Rights in Data - The Contractor shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).
24. Energy Efficiency - The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).
25. Verification No Boycott Israel. As required by Chapter 2270, Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
26. Foreign Terrorist Organizations. Pursuant to Chapter 2252, Texas Government Code, [Company] represents and certifies that, at the time of execution of this Agreement neither [Company], nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

**Reviewing Sanitation Regulations – No Action.**

**New Bank Account for Sheriff Department SB22 Grant** – Commissioner Johnson motioned to open a new Bank Account for the Sheriff's Department SB22 Grant. Commissioner Serna seconded the motion calling for a vote; all members answered "aye," and the motion carried.

**Rescinding the application for Interim Treasurer Position** – Commissioner Serna motioned to rescind the application for Interim Treasurer position. Commissioner Johnson seconded the motion calling for a vote; all members answered "aye," and the motion carried.

**Advertising and Interviewing for Treasurer’s Position** – Commissioner Johnson motioned to advertise and interview for the Treasurer's Position. Commissioner Serna seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Having the County Judge on all checking accounts and having access to online banking** – No Action.

**Reimbursing \$425.00 to Commissioner Johnson for Continuing Education classes** – Commissioner Serna motioned to reimburse \$425.00 to Commissioner Adam Johnson for continuing education classes. Commissioner Chavez seconded the motion calling for a vote; Commissioner Johnson abstained; three members answered “aye,” and the motion carried.

**Texas Government Code 61.0015, quarterly reimbursement request \$14.00 first day and \$52.00 for each day after for jury service** – Commissioner Johnson motioned to change the jury service fees \$14.00 for the first day and \$52.00 for each day after and remain \$6.00 for appearance. Commissioner Chavez seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

**Commissioner Court closed meeting** – The commissioners were in closed session at 10:32 a.m. to 11:36 a.m.

**List of Bills, Ratify Bills, and Other Bills** – Commissioner Serna motioned to approve the list of bills, ratify bills, and other bills. Commissioner Johnson seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

<b>Bills</b>	\$40,772.15
<b>Ratify Bills</b>	\$358.34
<b>Unratified Bills</b>	\$
<b>Un-Invoiced Bills</b>	\$374.58
<b>Other Bills</b>	\$200.00

**Payroll and Utility bills not yet received** - Commissioner Serna motioned to approve payroll and utility bills not yet received. Commissioner Johnson seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

<b>Payroll Pay date – 12/1/23</b>	\$40,671.91
<b>Payroll Pay date- 12/15/23</b>	\$40,077.58
<b>Payroll Pay date-12/29/23</b>	\$43,664.39

**Amendments and Transfers** – None. No Action.

**Monthly Reports** – Commissioner Serna motioned to approve the monthly reports. Commissioner Johnson seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

Sheriff’s Department                      Verbal Sheriff Cleveland  
Treasurer’s Investment Report and monthly report - December  
Terrell County Treasurers Report NOVEMBER 2023  
General Fund: as of JAN 8,2024  
Pecos County State Bank: \$161,321.39  
TexPool INV: \$0.00  
Lonestar (First Public) INV.: \$611.88  
TOTAL: \$161,321.39  
CEDAR GROVE CEMETERY:  
Pecos County State Bank account: \$16,744.21  
Raymond James (Money Market): \$70,427.16  
TOTAL \$87,171.37  
Historical Commission:  
\$6,873.94  
Hotel Motel TAX:  
\$48,950.35  
Venue:  
\$259,021.15  
Visitor Center:  
\$3,996.56

EMS JRAC (GRANT)  
 \$34,689.09  
 American Rescue Program Act Fund (A.R.P.A. GRANT)  
 \$34,885.74

SHERIFFS OFFICE GRANT REIMBURSEMENTS  
 OPERATION LONE STAR (O.L.S. GRANT) \$0.00  
 STONE GARDEN GRANT O.P.S.G. \$0.00  
 LOCAL BORDER STAR PROGRAM (L.B.S.P. GRANT) \$0.00

Animal Control	Verbal Sheriff Cleveland
Justice of the Peace	December (Both)
County & District Clerk	December
EMS	None
Road & Bridge	None
Senior Citizens Transportation	December
AgriLife Extension	Verbal - Alexandra
Museum & Historical Commission	December
Terrell County Library	None
Visitor Center	None
Sanitation	December
Clinic Report	December
Volunteer Fire Department	None
Airport Report	December
Food Pantry	December

**Adjourn** - Commissioner Serna motioned to adjourn. Commissioner Johnson seconded the motion calling for a vote; all members answered “aye,” and the motion carried.

/s/ Raeline Thompson

Raeline Thompson, County Clerk, and Ex-officio Clerk  
 Terrell County Commissioners Court

**ORDER TO APPROVE MINUTES OF REGULAR SESSION**

The above and preceding minutes of the meeting held on January 8<sup>th</sup>, 2024, are now approved (as amended this \_\_\_\_\_ day of \_\_\_\_\_ 2023) as presented IN OPEN COURT this 12<sup>th</sup> day of February, AD, 2024.

*Dale Carruthers* Presiding Officer

Attest: *Raeline Thompson* County Clerk

