

AI-9207

4.

**Bank Account for Grant
DRAINAGE DISTRICT**

Date: 05/13/2008
Submitted By: Lora Briones, DRAINAGE DISTRICT
Submitted For: Lora Briones
Department: DRAINAGE DISTRICT

Information

CAPTION

Request authorization to open a new demand checking account at the District Depository-First National Bank-Edinburg. This account will be named Hidalgo County Drainage District #1-Special Revenue fund and will be used to account for the DHS Grant award.

BACKGROUND

Fiscal Impact

Attachments

No file(s) attached.

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Dina Trevino	05/09/2008 01:32 PM	APRV
2	Court Administrator	Angela Garcia	05/09/2008 02:13 PM	APRV

Form Started By: Lora Briones
Started On: 05/07/2008 02:46 PM
Final Approval Date: 05/09/2008

AI-9198

5.

**Disburse / License Agreement
DRAINAGE DISTRICT**

Date: 05/13/2008
Submitted By: Jaime Salazar, DRAINAGE DISTRICT
Submitted For: Jaime Salazar
Department: DRAINAGE DISTRICT

Information

CAPTION

A.) Approval of Disbursement Agreement as it relates to the "McColl Rd. Mission Inlet Crossing" and authorization for Godfrey Garza to execute same.

B.) Approval of License Agreement by and between Hunt Valley Industrial, L.P. and the Hidalgo County Drainage District No.1 for Levee Improvements with the IBWC floodway system in Hidalgo County.

BACKGROUND

Fiscal Impact

Attachments

Link: [Hunt Valley License Agreement](#)

Link: [Disburse Agreement](#)

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Dina Trevino	05/09/2008 01:31 PM	APRV
2	Court Administrator	Angela Garcia	05/09/2008 02:13 PM	APRV

Form Started By: Jaime Salazar
Started On: 05/07/2008 02:02 PM

Final Approval Date: 05/09/2008

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of April, 2008, by and between **HUNT VALLEY INDUSTRIAL I, L.P.** (“**Licensor**”) and **HIDALGO COUNTY DRAINAGE DISTRICT NO. 1** (“**Licensee**”).

WITNESSETH:

WHEREAS, Licensee intends to construct, reconstruct and restore certain levee improvements within the International Boundary Water Commission (IBWC) Floodway System in Hidalgo County, Texas (the “**Project**”);

WHEREAS, Licensee has requested that Licensor grant to Licensee a license to enter upon certain real property owned by Licensor in order to store and stockpile dirt, rocks and similar fill material to be used in connection with the Project; and

WHEREAS, Licensor is willing to grant Licensee a license to enter upon Licensor’s real property to store and stockpile dirt, rocks and similar fill material to be used in connection with the Project, subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. License. Subject to the terms and conditions contained in this Agreement, Licensor hereby grants to Licensee a non-exclusive license (the “**License**”) in, over, under and across the land identified as the “**Site**” (herein so called) in Exhibit A attached hereto and made a part hereof to place and stockpile dirt, rocks and similar fill material excavated from or to be used in connection with the Project (the “**Permitted Use**”), and for no other purpose. The License is granted solely to the extent of Licensor’s right, title and interest in the Site, without any express or implied warranties. **LICENSOR HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE.** Licensee has inspected the Site, accepts the same “**AS IS, WHERE IS, WITH ALL FAULTS,**” and agrees that Licensor is under no obligation to perform any work or provide any maintenance, repairs or materials to the Site for the benefit of Licensee.

2. License Fee. On or prior to the date hereof, Licensee shall pay to Licensor, at the address of Licensor set forth in this Agreement, the amount of \$1,000 as a fee for the License granted herein.

3. Term of License. The term of the License shall begin on the date of this Agreement and, subject to paragraph 10 below, shall continue until the earlier of (a) the completion of the Project or (b) April 30, 2009. Following the termination of the License, the parties shall have no further rights or obligations under this Agreement (except for those obligations that survive the termination or expiration of the License). In the event Licensee retains possession of the Site or any portion thereof after the termination of the License, such possession and use shall be an unlawful detainer, and no tenancy or interest shall result from such possession; Licensee shall be subject to immediate removal. Licensee shall also pay all damages sustained by Licensor as a result of such holdover. The damages payable during any holdover period shall be payable to Licensor on demand.

4. Access to Site. Subject to the terms and conditions of this Agreement, Licensee shall have continuous access to the Site on a non-exclusive basis for the Permitted Use; provided, however, such access shall be (a) limited to Licensee, its employees, contractors and other persons under its direct supervision who need to access the Site for the Permitted Use, and (b) only by way of and through State Highway 494, and not over any other land owned by Licensor. Neither Licensor nor any of its affiliates, partners, officers, employees, agents, representatives, licensees or invitees (collectively, “**Licensor Parties**”) shall have any responsibility or liability for the conduct or safety of any of Licensee’s officers, agents, representatives, contractors, employees, licensees, invitees or any other person afforded access to the Site by or on behalf of Licensee while such parties are using any part of the Site, **EVEN IF ANY LIABILITY, DAMAGE, LOSS, COST, EXPENSE, CLAIM, DEMAND, OR INJURY IS CAUSED BY THE STRICT LIABILITY OR NEGLIGENCE, (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ANY LICENSOR PARTY**, it being understood and agreed that Licensee shall be solely liable for any liability, damage, loss, costs, expenses, claims, demands, actions, injury to or death of any such person (or any third party) which results from or arises out of the use of the Site by Licensee and/or its officers, agents, representatives, contractors, subcontractors, employees, licensees, invitees or any other such person from any cause. Licensee will keep the Site free from all liens and claims, legal or equitable, arising out of its activities, including mechanics' and materialmen's liens. If a lien or claim is filed by anyone claiming by, through or under Licensee, Licensee will discharge same within 10 days of filing by payment or posting of a surety bond. The provisions of this paragraph shall survive the termination or expiration of the License.

5. Maintenance of Site. At all times during the term of the License, Licensee shall maintain the Site in a good and safe condition. Licensee shall comply with all federal, state and local laws, rules, regulations, ordinances applicable to its use of the Site. Without limiting the foregoing, Licensee shall obtain any permits required for the Permitted Use prior to commencing such Permitted Use and shall at all times comply with the requirements of such permits.

6. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE HEREBY FULLY INDEMNIFIES, SAVES, AND HOLDS HARMLESS LICENSOR PARTIES AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COSTS, EXPENSES, CLAIMS, DEMANDS, AND ACTIONS OF ANY NATURE WHATSOEVER, ON ACCOUNT OF PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, WORKERS’ COMPENSATION AND DEATH CLAIMS) OR PROPERTY LOSS OR DAMAGE OF ANY KIND WHATSOEVER, WHICH ARISES, OR IS CLAIMED TO ARISE, DIRECTLY OR INDIRECTLY, OUT OF OR IS, OR IS CLAIMED TO BE, IN ANY MANNER CONNECTED WITH (A) THE USE OR OCCUPANCY OF THE SITE BY LICENSEE OR ITS OFFICERS, AGENTS, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ANY OTHER PERSON AFFORDED ACCESS TO THE SITE BY OR ON BEHALF OF LICENSEE, OR (B) LICENSEE’S BREACH OF THIS AGREEMENT, INCLUDING ANY LIABILITY, DAMAGE, LOSS, COST, EXPENSE, CLAIM, DEMAND OR ACTION CAUSED BY THE STRICT LIABILITY OR NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ANY LICENSOR PARTY.** Licensee must, at its own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to Licensor Parties and pay all attorneys’ fees and all other costs and expenses of any kind arising from any aforesaid liability, damage, loss, claims, demands, and actions. The provisions of this paragraph shall survive the termination or expiration of the License.

7. Insurance. At all times during the term of the License, Licensee shall keep and maintain in full force and effect, and shall cause its contractors to keep and maintain in full force and effect,

commercial general liability insurance covering injury or death of any person and damage to or destruction of property occasioned by, arising out of, or in connection with the use, occupancy or condition of the Site, and an automobile liability insurance covering injury or death of any person and damage to or destruction of property occasioned by, arising out of, or in connection all owned, non-owned, hired and borrowed automobiles. Such policies shall (a) be written on an occurrence basis and provide for the coverage to be primary and not contributory with any insurance carried or maintained by Licensor Parties, (b) contain a combined single limit of not less than \$2,000,000.00 with respect to each general liability policy and not less than \$1,000,000 with respect to each automobile liability policy for injury to or death of any person(s) or property damaged or destroyed, (c) name Licensor Parties as additional insureds, (d) be endorsed to provide that each insurer thereunder waives its right of subrogation against or contribution from Licensor Parties, (e) be written by an insurance company or companies licensed to do business in Texas and otherwise reasonably satisfactory to Licensor and (f) for each policy is maintained by Licensee, contain a blanket contractual liability endorsement (including Licensee's obligation to indemnify Licensor as required by this Agreement). Licensee shall promptly deliver to Licensor policies or certificates of insurance evidencing all required insurance required to be maintained hereunder. Renewals thereof shall be delivered to Licensor at least ten (10) days prior to the expiration of the policy. Licensee shall maintain such other insurance coverages, including Worker's Compensation, as are required by any federal, state or local laws, rules, regulations, ordinances or permits applicable to its activities, including the Permitted Use. Notwithstanding the foregoing, to the extent permitted by applicable law, Licensee may self-insure against the risks that would otherwise be covered by the insurance policies described above, but only if (a) Licensee has the financial capacity to adequately self-insure against such risks and (b) Licensee causes each of its contractors to keep and maintains in full force and effect the insurance coverages required by this paragraph at all times during the term of the License.

8. Hazardous Materials. Licensee will not cause or permit the storage, use, generation or disposition of Hazardous Materials in or about the Site without the prior written consent of the Licensor. A "**Hazardous Material**" is any substance (a) the presence of which requires notification, investigation or remediation under applicable federal, state or local laws, rules, regulations, ordinances and permits; or (b) which is defined, listed or regulated by any governmental authority as a "hazardous waste", "extremely hazardous waste", "solid waste", "toxic substance", "hazardous substance", "hazardous material" or "regulated substance", or otherwise regulated under applicable laws, rules, regulations, ordinances and permits, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and similar statutes. **TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, LICENSEE WILL INDEMNIFY AND DEFEND THE LICENSOR PARTIES AGAINST ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) ARISING, OR ALLEGED TO ARISE, OUT OF ANY DEPOSIT, SPILL, DISCHARGE OR OTHER RELEASE OF HAZARDOUS MATERIALS THAT OCCURS IN OR FROM THE SITE AS A RESULT OF THE ACTIONS OR OMISSIONS OF ANY OF LICENSEE'S OFFICERS, AGENTS, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ANY OTHER PERSON AFFORDED ACCESS TO THE SITE BY OR ON BEHALF OF LICENSEE WHILE SUCH PARTIES ARE USING ANY PART OF THE SITE.**

9. Restoration of Site. Prior to or immediately upon the termination or expiration of the License, Licensee shall, at Licensee's sole cost and expense, restore the Site to the same condition existing immediately prior to the granting of the License. Licensee's obligations under this paragraph shall survive the termination or expiration of the License.

10. No Sublicense or Assignment. Licensee shall not assign its rights under this Agreement or grant any sublicense with respect to all or any portion of the Site without the prior written consent of

Licensor. Any occupancy or use arrangement, assignment or sublease made without the prior written consent of Licensor shall be null and void.

11. No Interest in Real Property. The License, this Agreement nor the use of the Site for the Permitted Use or otherwise shall be construed to confer any interest or estate of any kind whatsoever in the Site to Licensee or to create a partnership or joint venture between Licensor and Licensee.

12. Subordination to Mortgages. The License and this Agreement shall be subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter filed against the Site by any bona fide third party lender of Licensor and to any renewals, modifications, consolidations, refinancings, and extensions thereof. This provision is hereby declared by the parties to be self-operative and no further instrument shall be required to effect such subordination.

13. Default By Licensee. It shall be a default by Licensee under this Agreement if Licensee fails to comply with any term, provision, condition or covenant of this Agreement. Upon the occurrence of such a default, Licensor shall have the option to (a) proceed to cure such failure and Licensee shall immediately reimburse Licensor for the costs thereof upon demand, (b) terminate the License by giving notice of such termination to Licensee, in which event Licensee shall immediately surrender the Site to Licensor and the parties shall have no further obligations under this Agreement (except for those obligations that survive the termination or expiration of the License) or (c) exercise any remedies that may be available to it at law or in equity.

14. Limitation of Licensor's Liability. Redress for any claims against Licensor under this Agreement shall only be made against Licensor to the extent of Licensor's interest in the Site, and Licensor shall not be liable for any deficiency. In no event will Licensee have the right to levy execution against any other property of Licensor or any other Licensor Party. In no event will Licensor or any other Licensor Party be liable to Licensee for consequential or special damages. The obligations contained in this Agreement to be performed by Licensor will be binding on Licensor and Licensor's successors and assigns only during their respective periods of ownership.

15. Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be deemed given or made only if in writing. Notice may be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand delivered or on the first day after deposit if sent certified mail. Notice must be addressed as follows:

If to Licensor:

Hunt Valley Industrial I, L.P.
3930 Plantation Grove Blvd.
Mission, Texas 78572
Attention: Paul Curtin
Telephone: (965) 585-9595
Fax: (956) 585-9599

If to Licensee:

Hidalgo County Drainage District No. 1
902 N. Doolittle Road
Edinburg, Texas 78539
Telephone: (956) 292-7080
Fax: (956) 292-7089

or to such other address as either party may designate by written notice to the other.

16. Miscellaneous. Subject to paragraph 9 above, this Agreement shall be binding upon the parties hereto, their successors and permitted assigns, and shall become effective only after the full execution and delivery hereof by Licensor and Licensee. This Agreement constitutes the entire, integrated agreement between Licensor and Licensee regarding the subject matter hereof, shall replace all prior negotiations, agreements or representations, whether written or oral, and may only be modified in writing signed by all of the parties to be bound. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement. Unless the context otherwise requires, singular includes the plural and plural the singular, and masculine, feminine and neuter genders are interchangeable. The word "including" does not exclude other items which are not specifically described. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions hereof. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party. However, the party for whose unilateral benefit a condition is herein inserted shall have the right to waive such condition. The failure by any party to insist on any one or more instances upon the performance of any covenant, agreement, or condition of this Agreement or to exercise any right or privilege herein conferred shall not be construed as a waiver of any such covenant, agreement, condition, right, or privilege. Time is of the essence of this Agreement and each and every provision of this Agreement. Although drafted by Licensor, this Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary, decree, or otherwise. This Agreement is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of such State shall govern the validity, construction, enforcement, and interpretation of this Agreement, unless otherwise specified herein. The parties agree that exclusive venue for any action brought for breach of this Agreement shall lie in Dallas County, Texas, notwithstanding that the Site is situated in Hidalgo County, Texas. This Agreement may be executed in any number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, this Agreement is executed as of the day first written above.

LICENSOR:

HUNT VALLEY INDUSTRIAL I, L.P.,

By: Hunt Valley Development I, LLC,
its General Partner

By: _____
Name: _____
Title: _____

LICENSEE:

**HIDALGO COUNTY DRAINAGE DISTRICT NO.
1**

By: _____
Name: _____
Title: _____

EXHIBIT A

SITE

(see page(s) following attached hereto)

DISBURSEMENT AGREEMENT

This AGREEMENT is entered into on **April 28, 2008**, by and between **G.O. Excavating & Construction** (hereinafter referred to as "Contractor"), with its principal place of business located at **603 South Jones Road, Alamo, TX 78516** and **AACON Fund Control, Inc.** (hereinafter referred to as "Disbursement Agent"), with its principal place of business located at **4232 I -35 North, Denton, TX 76207**.

The Parties acknowledge that the purpose of this Agreement is to provide disbursing authority and agent for and on behalf of the Contractor so as to provide the Contractor with an appropriate and applicable basis to obtain surety bonding from **Insurors Indemnity Company** (hereinafter "Surety"), and so as to assure the proper and full payment of the Contractor pursuant to its obligations to both the Owner and the Surety. In no event, however, shall the Disbursing Agent be deemed an indemnitor of the Contractor, as the Disbursing Agent shall act only with respect to the receipt and disbursement of monies received pursuant to the Prime Contract, and for no other purpose or reason.

This Agreement shall remain in full force and effect during the term of the Contract between the Owner and Contractor. The Contractor understands and acknowledges in the event of earlier termination of the terms and conditions of this Agreement, the Surety must be notified in writing immediately thereof and may cause the provisions of its indemnity agreement with Surety to be immediately invoked and enforced, at the sole discretion of the Surety.

The Disbursing Agent may at any time terminate its responsibility to the Principal or its successor by giving thirty (30) days written notice via registered or certified mail to the Principal and to the Surety at their last known addresses. However, immediately upon written request, the Disbursing Agent shall surrender all funds and records pertaining to the described project to the Surety or a third party designated by the Surety.

1. On **April 14, 2008**, Contractor and **Hidalgo County Drainage District No. 1** ("Owner") entered into a contract ("Contract") for the construction and/or improvement described as: **McColl Rd. Mission Inlet Crossing** (the "Project"). The Contract price is **\$377,959.09**. The Project must be constructed in accordance with the Contract and certain plans, specifications and other documents incorporated into the plans and specifications (collectively "Contract Documents").

2. As required by the Contract, Contractor as Principal has executed or will execute payment and performance bonds ("Surety Bonds") provided by **Insurors Indemnity Company** ("Surety").

3. Contractor represents that it is a properly licensed contractor and has all licenses and permits required or necessary to construct the Project.

4. Contractor desires that Disbursement Agent monitor the disbursement of all monies paid by Owner to Contractor for or on account of Project ("Contract Funds").

5. Disbursement Account

5.1 Contractor agrees that Disbursement Agent will open a commercial checking account at **JP Morgan Chase Bank, N.A., Denton North Branch #00435, Denton, Texas**, Account No. **771948189**, styled in the form;

INITIALS _____(Contractor) AA (AACON)

AACON Fund Control, Inc., Disbursement Agent For **G.O. Excavating & Construction**, the ("Disbursement Account"). All contract funds, including retainages, change orders, interest, modifications and claims proceeds received from the Owner, or forwarded by the Contractor, shall be deposited into this account. The Disbursement Agent will be the sole signatory on the Disbursement Account. The Disbursement Account will be used solely for deposit of Contract Funds and payment of just bills incurred by or on behalf of Contractor in connection with construction of the Project. Contractor shall not borrow funds against the Disbursement Account or the Project, nor shall it pledge the Disbursement Account as collateral against any loan, indebtedness or obligation.

5.2 Contractor agrees that it shall cause or direct the Owner to make all payments due under the Contract directly to Disbursement Agent for deposit into the Disbursement Account in the form of the Irrevocable Directive of Draw Proceeds form; attached hereto as Exhibit A. Owner's signing of the Exhibit "A" document will be construed as evidence that Contractor has revealed to the Owner the general content of this AGREEMENT, and Owner's signature on the Exhibit "A" document shall not release the Contractor from the Contractor's obligation to deliver, or cause to be delivered, all payments due under the Contract to the Disbursement Agent for deposit into the Disbursement Control Account.

5.3 Concurrently with the Execution of this AGREEMENT, Contractor shall deposit with **JP Morgan Chase Bank, N.A., Denton North Branch #00435, Denton, Texas**, into the Disbursement Account, Account No. **771948189**, the sum of **\$500.00** in cash, for the purpose of opening the account. This sum will be held, used and disbursed under the same terms and provisions provided in this AGREEMENT. Any surplus funds that might be left after disbursement under Article 7, and after disbursement of Contractor's monthly fee draw under Paragraph 7.7 shall remain and accumulate in the Disbursement account until the Owner, or its representative, has issued a "Letter of Acceptance", or its equivalent, all bills have been paid for the Project, and/or Surety gives its written consent to release the funds. In the event of a default pursuant to Article 9 herein, any and all surplus funds shall not be released to Contractor unless and until Surety has given its written consent thereto.

6. Contractor's Responsibilities

6.1 Contractor shall furnish to Disbursement Agent a signed copy of the Contract, all Contract Documents, Contractor's original Bid Estimate, a detailed cost breakdown including the names of all anticipated subcontractors and material suppliers/vendors, including the amounts of their contracts, and an estimate of the Contractor's anticipated profit or fee; and, if requested in writing by the Disbursement Agent, Contractor shall furnish copies of all subcontracts and major purchase orders, a copy of Contractor's certificate of insurance, a construction schedule and all other items for which Disbursement Agent determines are necessary to process payments to be made by Disbursement Agent. Contractor further agrees to immediately notify Disbursement Agent of any change in said contract amounts or estimated costs and furnish the Disbursement Agent a copy of all Change Order Requests, all Change Orders, all Contract Modifications, and all Contract Directives.

INITIALS _____(Contractor) | AA (AACON)

6.2 Contractor shall furnish to the Disbursing Agent copies of any and all notices received by the Contractor pursuant to the applicable state's Construction Lien Law, little Miller Act, or if a federal project, the Miller Act or the Capehart Act, whichever is applicable, including any Notices to Contractor, Notices to Owner, Notices of Non-Payment or Claims of Lien or other statutory notices, and shall do so within seven (7) days of its receipt of any such notices or liens. Failure to furnish copies of notices to the Disbursing Agent shall be deemed a material breach of the Disbursement Control Agreement.

6.3 Contractor shall give notice to the Disbursing Agent of the existence of any disagreement or dispute between the Owner, the Contractor or any subcontractor, materialman or provider of labor or services to the Project.

6.4 At the request of the Disbursing Agent, the Contractor shall provide the Disbursement Account with such additional funds as may be necessary to fully pay all costs related to the contract between the Owner and Contractor. The Parties acknowledge that this paragraph is intended to avoid Disbursing Agent's lacking sufficient funds to pay current bona fide claims of potential lienors or claimants based on the unavailability of funds in the Contractor's Disbursement Account. The Contractor's failure to deposit required additional funds in the Disbursement Account hereunder shall be deemed a material default of this Agreement.

7. Disbursement of Funds

7.1 Contractor authorizes, instructs and directs Disbursement Agent to hold in the Disbursement Account all Contract Funds and to disburse Contract Funds as follows:

7.2 The Disbursement Agent agrees that it will release funds only upon the presentation by Contractor of fully executed vouchers, from which checks shall be made payable directly to the subcontractors and material suppliers/vendors who have supplied labor, materials, rental equipment, services, and/or incorporated equipment, and who are entitled to receive payment. Said vouchers shall list the total amount due each vendor and the amount to be deducted from each line item category on the cost breakdown that has been submitted to Disbursement Agent by Contractor. Each voucher shall be accompanied by delivery receipts and tickets, invoices, and/or any other similar supporting documentation requested by the Disbursement Agent for processing of the payment. No payments for labor, materials, equipment or services shall be authorized in excess of estimated costs as represented to Disbursement Agent, without prior consent of Disbursement Agent, and until labor, materials and/or equipment have been incorporated into the construction or consumed in the construction. The Contractor's fee shall be reduced to cover all costs in excess of estimated costs, unless the original estimated costs are revised upwards by signed Change Orders, Contract Modifications and/or Contract Directives.

Subcontractors and suppliers eligible for payment under this Paragraph include:

INITIALS _____(Contractor) AA (AACON)

(1) Subcontractors performing a portion of the work required by the plans, specifications, or general conditions of the Project;

(2) Suppliers furnishing materials, services, or equipment to be incorporated into the Project, or necessary to complete the work required by the plans, specifications, and general conditions of the Project. Equipment includes equipment installed into the completed project or the rental of equipment necessary to complete the Project. Equipment shall not include the purchase of construction equipment, tools, code books, and/or clothing by the Contractor, or

(3) Subcontractors and/or vendors who are covered by the applicable bond lien law or public works statute(s).

Payments not included in subparagraphs (1) and (2) above are prohibited without the written consent of Surety.

7.3 The Disbursement Agent will make each disbursement check payable directly to the supplier and/or subcontractor to whom such payment is due per each voucher submitted to the Disbursement Agent by the Contractor.

7.4 The Disbursement Agent will also release funds to the Contractor in reimbursement of miscellaneous and C.O.D. materials, suppliers and services (generally under \$1,000 per purchase), and direct job labor, all used to complete the Project upon presentation by the Contractor of fully executed vouchers listing the total amount due for materials, supplies, services and labor and the amount to be deducted from each line item category on the cost breakdown that has been submitted to Disbursement Agent by the Contractor. Further, it is agreed that each voucher shall be accompanied by paid invoices, delivery slips, canceled checks, time sheets, payroll ledgers, certified payrolls (if required by the Contract, and/or similar documentation as may be required by the Disbursement Agent. Labor eligible for reimbursement under this section shall include only direct labor employed at the job site required to complete the Project including job site supervision. No reimbursement is eligible for corporate officers' payroll or contractor's general, administrative or overhead labor, materials, supplies or services, except as provided in Paragraph 7.7 below.

7.5 Disbursement Agent shall reserve funds equivalent to the amount of liens or documented and potentially supportable claims or which Disbursement Agent is, or should be, aware that may be filed against the Project in connection with the Contract, plus a reasonable sum (not to exceed 25% of the lien or claim) for estimated legal costs and attorney's fees connected therewith.

7.6 Disbursement Agent shall withhold **five percent (5%)** retainage from each payment, in addition to any amount being withheld by the Owner for retainage. This sum will be held as "collateral" per agreement with the Surety, and shall only be released to the Contractor upon the written consent of the Surety. Such withholding is in addition to any percentage that has been identified above as set aside for reserves. Surety must consent in writing before any retainage, collateral and/or reserve funds (per Article 7.5) may be released to the Contractor; however, any withholdings by the Disbursement Agent in

INITIALS _____(Contractor) AA (AACON)

addition to retainage, collateral and/or reserve funds may be released by the Disbursement Agent to Contractor, or its subcontractors upon presentation of properly executed vouchers for payments under Paragraphs No. 7.2 or 7.4 above, or the Disbursement Agent's satisfaction of job completion and acceptance.

7.7 The Contractor will be paid its Contractor's Fee monthly, paid in the same proportion as the Contractor is paid by the Owner, not to exceed a total of \$ _____ (less cost overruns) as proceeds are available in the Disbursement Account to cover Home Office Overhead and Fee. Disbursements to the Contractor under this Paragraph may be withheld by the Disbursement Agent until all documents required by this AGREEMENT have been furnished to the Disbursement Agent's satisfaction.

7.8 Disbursement Agent will obtain, and keep on file for inspection by all parties to this AGREEMENT and by Surety, appropriate releases from subcontractors, laborers, and material suppliers.

7.9 Disbursement Agent is expressly authorized, instructed and directed to disburse funds to itself for payment of its fee for services in accordance with Article 10 below.

7.10 In the event of default, either voluntary or involuntary, by Contractor of:

- (1) Its obligations under this AGREEMENT;
- (2) The Surety Bonds and/or any other agreement between Contractor and Surety; or
- (3) The Contract;

all funds then held in the Disbursement Account or which may thereafter come to be deposited in the Disbursement Account pursuant to this AGREEMENT, shall be disbursed only with the consent of Surety. Upon receipt of written demand from Surety, following a default of the Principal as defined in this Paragraph, the Principal consents to, agrees, and directs, instructs and authorizes the Disbursement Agent to release all contract funds held under this AGREEMENT to Surety.

7.11 Upon completion of the Project as evidenced by a letter of acceptance by the Owner and satisfaction of all liabilities related to or arising out of the Contract or this AGREEMENT, any funds remaining in the Disbursement Account and any funds that may be accrued by the Disbursement Account shall become the property of Contractor and will be paid within 30 days of receipt of the last payment by Owner, satisfaction of all contractual obligations and upon written consent of Surety.

7.12 Disbursement Agent is authorized to provide copies of the disbursement monthly summaries, and/or other information on the Disbursement Control services to Surety, if requested. This authorization shall not create any third party obligations or fiduciary duties between Disbursement Agent and Surety or any other third party.

INITIALS _____(Contractor) AA (AACON)

7.13 In the event of a default as defined by Article 9 below, or if the potential for a default appears imminent, Disbursement Agent is expressly directed, instructed and authorized to provide notice to Surety.

8. Disbursement Agent's Responsibilities

8.1 Disbursement Agent accepts this assignment and undertakes to perform promptly, diligently and faithfully the duties set forth in Article 7 above, upon the condition, however, that its disbursement of funds upon the signed order of Contractor (or Contractor's duly authorized agent) shall, as to Disbursement Agent's duty to the Contractor, be conclusively deemed to be the exercise of due care.

In addition to the foregoing obligation, Disbursement Agent maintains at its principal place of business in Denton, Texas, adequate records of funds received and disbursed in connection with the Project and will permit inspection of these records at any reasonable time or times by Contractor or Surety, or the authorized agent of either of them. The Disbursement Agent has the right to change its principal place of business and will give notice, as soon as possible, if it changes its place of business to the Contractor, the Surety and to the Owner, if applicable.

8.2 Disbursement Agent agrees to maintain for the benefit of Contractor and Surety, a policy of insurance protecting Contractor and Surety from any errors and omissions on its part in performing its obligations pursuant to this AGREEMENT. Disbursement Agent will provide evidence of said coverage to both Contractor and Surety upon their written request(s).

8.3 Contractor and Disbursement Agent agree that in the event the Surety gives the Disbursing Agent directions with respect to the disbursement of Contract Funds, Disbursing Agent shall be obligated to follow such directions and such directions shall take precedence over any conflicting directions in this AGREEMENT or by the Contractor.

9. Default

9.1 There shall be deemed to have been a default under this AGREEMENT in the event of the occurrence of any of the following:

9.1.1 Failure of Contractor to perform any material obligation to be performed by Contractor in accordance with the Contract Documents or under this AGREEMENT;

9.1.2 Contractor's making of any untrue or misleading statement to Disbursement Agent as to any material fact for the purpose of causing Disbursement Agent to disburse Contract Funds or to take other action or to omit to take any action;

9.1.3 Failure of Contractor to use and apply within a reasonable time funds paid to the Disbursement Account for the purpose for which funds were paid;

9.1.4 Diversion to any other use of materials furnished, earmarked or obtained for use in this Project;

INITIALS _____(Contractor) AA (AACON)

9.1.5 Contractor's making of an assignment for benefit of creditors, the appointment of a receiver for the Contractor or Contractor's property, or the insolvency of the Contractor;

9.1.6 Transfer, sale, conveyance or assignment by Contractor of Contract, or of this AGREEMENT, or of any rights, benefits or monies thereunder, except to persons entitled thereto by having furnished labor, materials, or services in the construction of the Project;

9.1.7 If Contractor is an individual, if Contractor dies or becomes incapacitated for any reason, thereby preventing Contractor from performing Contractor's obligations under this AGREEMENT, or if Contractor becomes a fugitive from justice or for any reason disappears and cannot be found immediately by Disbursement Agent by use of the usual methods;

9.1.8 Being defaulted by the Owner;

9.1.9 Breaking any agreement with the Surety.

10. Fee

10.1 For its customary services performed or to be performed pursuant to this AGREEMENT, Disbursement Agent shall be entitled to receive a fee of **\$3,779.59**. This fee shall conclusively be deemed earned by Disbursement Agent upon execution of this AGREEMENT, and paid as follows: **in the same proportion as the Contractor is paid by the Owner**. In the event of a default, any unpaid fee shall be paid in full. If the cost of the construction, including the cost of all alterations, deviations and extras, exceeds the sum of **\$377,959.09**, Disbursement Agent shall be entitled to receive an additional fee of **One Percent (1%)** of this excess cost.

10.2 Costs for checks, deposit slips, endorsement stamps, monthly bank service charges, reconciliation, accounting records sheets, and all other materials necessary or proper to establish the appropriate records for receipts and disbursements, along with shipment charges (Federal Express, UPS, Courier, Special Delivery, Etc.) for Disbursement packages, checks, documents, etc. are the sole responsibility of the Contractor and shall be paid by the Contractor from available funds in the Disbursement Account and reimbursed to Disbursement Agent immediately upon incurred cost.

10.3 If Disbursement Agent is required to perform extraordinary services, Contractor shall be liable to pay Disbursement Agent a reasonable sum for these services, and to reimburse Disbursement Agent for necessary expenses. If Disbursement Agent becomes a party to any default, claim, demand, arbitration or litigation arising out of labor or material lien claims involved in the Project or arising out of the Contract, Contractor shall be liable to pay to Disbursement Agent all of its attorneys' fees and legal costs and the amount of any settlement, judgment or other award rendered in connection with such action and these costs shall be considered Project Costs.

11. This AGREEMENT shall be construed according to the laws and statutes of the State of Texas, except for conflicts of Law questions, which will be construed according to the laws and statutes of the State of New York.

INITIALS _____(Contractor) AA (AACON)

12. Venue under this AGREEMENT shall be in Denton County, Texas.
13. Any suit under this AGREEMENT must be filed within two (2) years and a day of this AGREEMENT being breached, the termination of this AGREEMENT, or the date on which the last check is issued per the terms of this AGREEMENT.
14. This AGREEMENT shall bind and inure to the benefit of the heirs, executors, administrators and successors in interest of the parties of the AGREEMENT.

The parties to this AGREEMENT have executed it on the day first written above.

CONTRACTOR:	DISBURSEMENT AGENT:
Signed:	Signed: <i>Arnold P. Acker</i>
By/Title:	By/Title: Arnold P. Acker, President & CEO
Company: G.O. Excavating & Construction	AACON Fund Control, Inc.
Address: 603 South Jones Road	624 West University, Suite 238
Alamo, TX 78516	Denton, Texas 76201-1889
Phone: 956-277-8501	Phone: 940-384-1189 or 940-243-2143 (P. Young)
Fax: 956-782-6680	Fax: 940-384-0349 or 940-387-2323 (P. Young)
Cell: Cell#	Cell #: 214-676-1437
Email: Adelrio@rgv.rr.com	Email: arnold.acker@charter.net
	Email: pat.young@charter.net

INITIALS _____(Contractor) AA (AACON)

EXHIBIT A

G.O. EXCAVATING & CONSTRUCTION
603 South Jones Road
Alamo, TX 78516
Phone: 956-277-8501
Fax: 956-782-6680

IRREVOCABLE DIRECTIVE OF DRAW PROCEEDS

Insurors Indemnity Company ("Surety"), Contract Surety for G.O. EXCAVATING & CONSTRUCTION, ("CONTRACTOR"), has required CONTRACTOR as a condition precedent to issuing its Payment and Performance bonds for the construction of a project known as: **McColl Rd. Mission Inlet Crossing**, to employ the services of a disbursement control agent, AACON Fund Control, Inc. AACON Fund Control, Inc. is to be employed directly by CONTRACTOR and is in no way a party to the agreement between the **Hidalgo County Drainage District No. 1** ("Owner") and CONTRACTOR.

The Disbursement Control Agreement between CONTRACTOR and AACON Fund Control, Inc. requires that Owner shall direct or cause all contract funds, including, but not limited to retainage, interest, change orders, modifications or claim proceeds, if any, to be deposited into a Project Specific Disbursement Account that has been set up for CONTRACTOR. **The Owner signing herein below irrevocably certifies that all payments made to CONTRACTOR for the construction described above shall be endorsed on the back of the payment check, draft or voucher to include the words;**

Deposit Only to AACON Fund Control, Inc., Disbursement Agent for G.O. EXCAVATING & CONSTRUCTION, Account No. 771948189, JP MORGAN CHASE BANK.

All payments are to be mailed to: **G.O. EXCAVATING & CONSTRUCTION, C/O AACON Fund Control, Inc., 624 West University, #238, Denton, TX 76201-1889** or wire transferred directly to the above described account at: **ABA Routing No. 111000614, JP Morgan Chase Bank, N.A., Denton North Branch #00435, 1200 West University Drive, Denton, Texas.** AACON Fund Control, Inc. has the right to change the address to which the funds are to be mailed, or to change the bank and/or account number to which the funds are to be deposited.

This certification is irrevocable by the Owner and can only be changed by written directive of CONTRACTOR with the written consent of the Chief Executive Officer or President of the Surety.

G.O. EXCAVATING & CONSTRUCTION:

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1:

Print: _____
Its: _____

Print: _____
Its: _____
Phone: _____
Fax: _____
Date: _____

INITIALS _____(Contractor) AA (AACON)

AI-9197
IWO's 3, 5 & 6
DRAINAGE DISTRICT

6.

Date: 05/13/2008
Submitted By: Sylvia Sanchez, DRAINAGE DISTRICT
Submitted For: Sylvia Sanchez
Department: DRAINAGE DISTRICT

Information

CAPTION

Consideration and approval of Individual Work Order (IWO) No. 3, 5, & 6 with the International Boundary & Water Commission (IBWC).

BACKGROUND

Fiscal Impact

Attachments

Link: [iwo3](#)

Link: [iwo5](#)

Link: [iwo6](#)

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
1	Budget & Management	Dina Trevino	05/09/2008 01:30 PM	APRV
2	Court Administrator	Angela Garcia	05/09/2008 01:31 PM	APRV

Form Started By: Sylvia Sanchez
Started On: 05/07/2008 01:50 PM
Final Approval Date: 05/09/2008

MOU IBM 07 A001 1
Hidalgo County Drainage District No. 1
and International Boundary and Water Commission, U.S. Section
Individual Work Order (IWO) No. 3

Background:

The Hidalgo County Drainage District No. 1 (District) and the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC) have agreed to jointly coordinate design and construction activities for rehabilitation of specific USIBWC levees of the Lower Rio Grande Flood Control Project (LRGFCP) within Hidalgo County, Texas. Pursuant to this agreement, the USIBWC and the District entered into a Memorandum of Understanding (MOU No. IBMO7A001 1, dated July 16, 2007) which outlines general authorities and requirements under which the two agencies will operate. Under the MOU, the District will perform work on specific levee reaches identified by IWO in accordance with USIBWC standards and design water surface elevations, coordinate with USIBWC personnel on geotechnical investigations, land easement acquisition, design and construction activities, and turn over the operation and maintenance of the completed works to the U.S. Government. The Parties agreed that liability concerns regarding the District performing work on the USIBWC levees of the LRGFCP were to be specifically addressed in this IWO.

Scope of Work:

The specific levee reach for this IWO starts at the upstream end of the Banker Floodway, beginning at the north end of the Banker Weir to 23rd Street, said distance being approximately 4.84 miles. On those areas of the levee reach requiring rehabilitation as established by USIBWC, USIBWC tasks HCDD1 with raising the existing levee to contain the design flood and insuring the control of levee through seepage and under seepage. On those areas of the levee reach not requiring levee rehabilitation as established by USIBWC, USIBWC authorizes HCDD1 access to the levee to perform work tasked by DHS subject to USIBWC project approval. The levee can be rehabilitated with an earthen berm structure, or floodwall, or a combination thereof. The top of the rehabilitated structure shall not exceed USIBWC provided top-of-levee elevations. The District shall provide information to the USIBWC regarding the design of the levee sufficient to meet FEMA criteria for certification in accordance with 44 Code of Federal Regulations (CFR) Section 65.10.

The District shall provide all labor, equipment, and materials required to fully fund necessary geotechnical investigations, easement acquisition, design, construction, and field construction management activities for rehabilitation of the levee reach described herein.

Design:

- 1) Assimilation, review, analysis, and evaluation of all historical information related to the project, including: a) geotechnical reports, b) right-of-way (ROW) maps, c) USIBWC hydraulic model, d) LiDAR data for Hidalgo County, and e) environmental assessments.

- 2) Surveying of ROW, including preparation of plats and legal descriptions for easement acquisition, including those temporary ones required for construction. Easement acquisition on behalf of the U.S. Government.
- 3) Additional geotechnical investigations as warranted after review of the available geotechnical information provided by the USIBWC.
- 4) Preparation of plans and specifications for levee raising, including modification of structures, installation of closure devices and seepage control. Plans and specifications shall be in accordance with soils recommendation report, USIBWC requirements and construction industry standards. Design criteria for earthen berm structure includes a minimum 16 foot top levee width, 3:1 riverside levee slope and 3:1 landside levee slope, engineered soil materials, 95% compaction unless otherwise recommended by the geotechnical engineer, and a 15 foot ROW width outside of both the riverside and landside levee toes for maintenance purposes. Absolute minimum landside slope shall be no steeper than 2.5:1. All work shall be done in accordance with the certification requirements of 44 CFR Section 65.10.
- 5) Design criteria for concrete floodwall structure includes a minimum 16 foot top levee width, vertical face on riverside with a maximum height of new USIBWC top of levee elevation; if using the concrete floodwall the top of floodwall elevation shall be equal to the top of levee elevation and 3:1 landslide levee slope, soil materials as per U.S. Army Corps of Engineers specification for backfill behind floodwall; 95% compaction unless otherwise recommended by the geotechnical engineer, and a 15 foot ROW width outside of the riverside bottom of wall and 15 foot ROW width outside the landslide levee toe for maintenance purposes. Absolute minimum landslide slope shall be no steeper than 2.5:1. All work shall be done in accordance with the certification requirements of 44 CFR Section 65.10.
- 6) Coordination with local entities, including landowners, irrigation districts, U.S. Fish and Wildlife Service, Department of Homeland Security (DHS) and any other interested governmental or nongovernmental organizations.
- 7) Preparation of a Critical Path Method (CPM) Microsoft (MS) Project Schedule for the work, with major milestones and durations provided for all geotechnical, design, construction and certification elements. Schedule shall be updated on a monthly basis and progress compared to the baseline schedule. Monthly progress meeting via telecom, with minutes prepared within one week of meeting.

Construction:

Construction shall be in conformance with standards common in construction industry practice, including American Society for Testing and Materials (ASTM), Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, and American Association of State Highway and Transportation Officials (AASHTO). The District shall comply with all applicable provisions of the U.S. Army Corps of Engineers Safety and

Health Requirements Manual, EM 385-1-1, 2003, or latest edition, and the Federal Occupations Safety and Health Administration, 29 CFR 1926- Construction Standards. The District shall provide all funding, oversight, inspection, and contract solicitation and administration for the work.

Technical Representatives:

For the USIBWC, Dr. Raymundo Aguirre, Engineering Services Division will be the authorized representative. Godfrey Garza is designated as the authorized representative of the District. Patrick Daize is designated as the local USIBWC contact in the Lower Rio Grande Valley for coordination of design and construction activities.

Types of Contracts:

The work will be conducted under contract between the District and competitively selected engineering consultants and competitively awarded construction contracts or subcontracts. Some work may be done with District forces.

Obligations:

DISTRICT SERVICES

The following design and construction services will be performed by the District, or the District's contractor:

- A. The District shall review all ROW and geotechnical information and determine the need for additional ROW or geotechnical investigations with the specific concurrence of the USIBWC. If required, the District shall secure, in accordance with applicable law, the services of appropriate consultants for these activities, and shall acquire any additional ROW needed on behalf of, and in the name of, the United States of America. The District shall insure that the design is done in accordance with current Corps of Engineer guidance (EM 1110-2-1902 Slope Stability, EM 1110-2-569 Design Guidance for Levee Under Seepage, and EM 1110-2-1913 Design and Construction of Levees on Control of Under Seepage and Through Seepage for the Levee). The design shall meet the current FEMA criteria (44 CFR 65.10) for levee certification using the design flood information and design water surface elevations provided by the USIBWC.
- B. The District shall submit to the USIBWC for review and approval all interim and final deliverables for design and construction of rehabilitation of the levee reach identified herein. The Government shall have 21 days to review and provide compliance conformance of the deliverables. All deliverables will be provided in both hard copy and electronic format. The deliverables are as follows:
 - 1) PRE-DESIGN DELIVERABLES
 - a) Additional geotechnical investigation reports or seepage analysis reports
 - b) Preliminary Engineering Report
 - c) Easement acquisition documents, including plat, legal description and acreage

- calculations
 - d) Fully executed and recorded easement instruments
- 2) PRE-CONSTRUCTION CONTRACT AWARD DELIVERABLES
- a) Construction plans and specifications
 - b) Full Copy of Solicitation for Construction Contract
 - c) Award Process and Evaluation Criteria including abstract of offers (Past Performance must be an element of evaluation criteria)
 - d) Responsibility of Determination of Successful Contractor
- 3) POST- AWARD
Fully Executed contract
- 4) POST CONSTRUCTION
- a) Operations and Maintenance Manual
 - b) Record drawings
 - c) FEMA certification documentation
- C. The District will coordinate with the USIBWC and DHS on DHS design and construction proposals, general scheduling activities, levee construction activities, and potential flood events or irrigation releases as they may impact construction activities.
- D. The District will provide all solicitation and bidding services, and construction contract administration services, including QA/QC, safety, inspection, and submittal reviews.
- E. The District will provide a detailed operations and maintenance procedure manual and as built record drawings for the rehabilitated levee.
- F. The District or the District's Contractor will provide the USIBWC the design firm representative in defense of any design issues that may arise throughout design and construction and for the designed life of the levee (30 years). The District and the District's Contractor will not be responsible for levee failures that result from substandard level of operations and maintenance by the USIBWC.
- G. The District and the District's Contractor will incorporate language substantially similar to the Federal Acquisition Regulation (FAR) as shown in the Matrix and FAR part 52.301 for firm fixed price construction contracts to the fullest extent possible. Workmanship, warranty, liability, and insurance are paramount for incorporation into any construction contract for levee work. Additional guidance is available in FAR part 36 for construction work.
- H. The District or the District's Contractor will provide the USIBWC with a Certificate of Liability Insurance in the amount of \$2,000,000 and will name the USIBWC as an additionally insured at no additional cost to the USIBWC.

USIBWC SERVICES

The following services will be performed by the USIBWC:

- A. The USIBWC will provide an Environmental Assessment for the earthen berm work to be performed by the District. Should the District select a floodwall alternative for the levee rehabilitation, any environmental work related to the floodwall must be obtained from the U.S. Department of Homeland Security. For Hidalgo County, Texas segments set forth in the Department of Homeland Security Determination and Waiver Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, dated April 1, 2008, the Secretary of Homeland Security has issued a waiver of certain laws, regulations and other legal requirements.
- B. The USIBWC will provide existing ROW and easement documents to the District for their use in design and construction activities.
- C. The USIBWC will provide LiDAR data for Hidalgo County and for portions of Mexico that border Hidalgo County.
- D. The USIBWC will review the design and construction plans and will provide compliance conformance prior to construction.
- E. The USIBWC will provide a local contact for coordination of field activities during design and construction.

Delivery and Schedule:

The District shall provide an overall MS project work schedule to USIBWC three weeks before commencement of work; USIBWC shall approve the schedule within 21 calendar days.

The District shall provide written updates, along with a copy of the updated Project Schedule, via email by the last day of each month to the USIBWC during the progress of the work.

Period of performance for overall project completion will be 365 calendar days following the issuance of the IWO.

The District will provide a detailed operations and maintenance procedure manual and as built record drawings for the rehabilitated levee work within 60 calendar days of construction completion.

It is important to note that this IWO is executed by both parties with the understanding that there will be no exchange of funds between the parties.

FOR THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER
COMISSION

BY: _____ Date: _____
Carlos Marin, PE
Commissioner, USIBWC

FOR HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

BY: _____ Date: _____
Juan D. Salinas
Chairman of the Board

MOU IBM07A0011
Hidalgo County Drainage District No. 1
and International Boundary and Water Commission, U.S. Section
Individual Work Order (IWO) No. 5

Background:

The Hidalgo County Drainage District No. 1 (District) and the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC) have agreed to jointly coordinate design and construction activities for rehabilitation of specific USIBWC levees of the Lower Rio Grande Flood Control Project (LRGFCP) within Hidalgo County, Texas. Pursuant to this agreement, the USIBWC and the District entered into a Memorandum of Understanding (MOU No. IBMO7A001 1, dated July 16, 2007) which outlines general authorities and requirements under which the two agencies will operate. Under the MOU, the District will perform work on specific levee reaches identified by IWO in accordance with USIBWC standards and design water surface elevations, coordinate with USIBWC personnel on geotechnical investigations, land easement acquisition, design and construction activities, and turn over the operation and maintenance of the completed works to the U.S. Government. The Parties agreed that liability concerns regarding the District performing work on the USIBWC levees of the LRGFCP were to be specifically addressed in this IWO.

Scope of Work:

The specific levee reach for this IWO starts at the LRGFCP levee East of Monterrey Banco, Lower Rio Grande Valley National Wildlife Refuge and runs west to La Coma, Lower Rio Grande Valley National Wildlife Refuge, said distance being approximately 4.15 miles. On those areas of the levee reach requiring rehabilitation as established by USIBWC, USIBWC tasks HCDD1 with raising the levee to contain the design flood and insuring the control of levee through seepage and under seepage. On those areas of the levee reach not requiring levee rehabilitation as established by USIBWC, USIBWC authorizes HCDD1 access to the levee to perform work tasked by DHS subject to USIBWC project approval. The levee reach can be rehabilitated with an earthen berm structure, or floodwall, or a combination thereof. The top of the rehabilitated structure shall not exceed USIBWC provided top-of-levee elevations. The District shall provide information to the USIBWC regarding the design of the levee sufficient to meet FEMA criteria for certification in accordance with 44 Code of Federal Regulations (CFR) Section 65.10.

The District shall provide all labor, equipment, and materials required to fully fund necessary geotechnical investigations, easement acquisition, design, construction, and field construction management activities for rehabilitation of the levee reach described herein.

Design:

- 1) Assimilation, review, analysis, and evaluation of all historical information related to the project, including: a) geotechnical reports, b) right-of-way (ROW) maps, c) USIBWC hydraulic model, d) LiDAR data for Hidalgo County, and e) environmental assessments.

- 2) Surveying of ROW, including preparation of plats and legal descriptions for easement acquisition, including those temporary ones required for construction. Easement acquisition on behalf of the U.S. Government.
- 3) Additional geotechnical investigations as warranted after review of the available geotechnical information provided by the USIBWC.
- 4) Preparation of plans and specifications for levee raising, including modification of structures, installation of closure devices and seepage control. Plans and specifications shall be in accordance with soils recommendation report, USIBWC requirements and construction industry standards. Design criteria for earthen berm structure includes a minimum 16 foot top levee width, 3:1 riverside levee slope and 3:1 landside levee slope, engineered soil materials, 95% compaction unless otherwise recommended by the geotechnical engineer, and a 15 foot ROW width outside of both the riverside and landside levee toes for maintenance purposes. Absolute minimum landside slope shall be no steeper than 2.5:1. All work shall be done in accordance with the certification requirements of 44 CFR Section 65.10.
- 5) Design criteria for concrete floodwall structure includes a minimum 16 foot top levee width, vertical face on riverside with a maximum height of new USIBWC top of levee elevation; if using the concrete floodwall the top of floodwall elevation shall be equal to the top of levee elevations and 3:1 landslide levee slope, soil materials as per U.S. Army Corps of Engineers specification for backfill behind floodwall; 95% compaction unless otherwise recommended by the geotechnical engineer, an a 15 foot ROW width outside of the riverside bottom of wall and 15 foot ROW width outside the landslide levee toe for maintenance purposes. Absolute minimum landslide slope shall be no steeper than 2.5:1. All work shall be done in accordance with the certification requirements of 44 CFR Section 65.10.
- 6) Coordination with local entities, including landowners, irrigation districts, U.S. Fish and Wildlife Service, Department of Homeland Security (DHS) and any other interested governmental or nongovernmental organizations.
- 7) Preparation of a Critical Path Method (CPM) Microsoft (MS) Project Schedule for the work, with major milestones and durations provided for all geotechnical, design, construction and certification elements. Schedule shall be updated on a monthly basis and progress compared to the baseline schedule. Monthly progress meeting via telecom, with minutes prepared within one week of meeting.

Construction:

Construction shall be in conformance with standards common in construction industry practice, including American Society for Testing and Materials (ASTM), Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, and American Association of State Highway and Transportation Officials (AASHTO). The District shall comply with all applicable provisions of the U.S. Army Corps of Engineers Safety and

Health Requirements Manual, EM 385-1-1, 2003, or latest edition, and the Federal Occupations Safety and Health Administration, 29 CFR 1926- Construction Standards. The District shall provide all funding, oversight, inspection, and contract solicitation and administration for the work.

Technical Representatives:

For the USIBWC, Dr. Raymundo Aguirre, Engineering Services Division will be the authorized representative. Godfrey Garza is designated as the authorized representative of the District. Patrick Daize is designated as the local USIBWC contact in the Lower Rio Grande Valley for coordination of design and construction activities.

Types of Contracts:

The work will be conducted under contract between the District and competitively selected engineering consultants and competitively awarded construction contracts or subcontracts. Some work may be done with District forces.

Obligations:

DISTRICT SERVICES

The following design and construction services will be performed by the District, or the District's contractor:

- A. The District shall review all ROW and geotechnical information and determine the need for additional ROW or geotechnical investigations with the specific concurrence of the USIBWC. If required, the District shall secure, in accordance with applicable law, the services of appropriate consultants for these activities, and shall acquire any additional ROW needed on behalf of, and in the name of, the United States of America. The District shall insure that the design is done in accordance with current Corps of Engineer guidance (EM 1110-2-1902 Slope Stability, EM 1110-2-569 Design Guidance for Levee Under Seepage, and EM 1110-2-1913 Design and Construction of Levees on Control of Under Seepage and Through Seepage for the Levee). The design shall meet the current FEMA criteria (44 CFR 65.10) for levee certification using the design flood information and design water surface elevations provided by the USIBWC.
- B. The District shall submit to the USIBWC for review and approval all interim and final deliverables for design and construction of rehabilitation of the levee reach identified herein. The Government shall have 21 days to review and provide compliance conformance of the deliverables. All deliverables will be provided in both hard copy and electronic format. The deliverables are as follows:
 - 1) PRE-DESIGN DELIVERABLES
 - a) Additional geotechnical investigation reports or seepage analysis reports
 - b) Preliminary Engineering Report
 - c) Easement acquisition documents, including plat, legal description and acreage

- calculations
 - d) Fully executed and recorded easement instruments
- 2) PRE-CONSTRUCTION CONTRACT AWARD DELIVERABLES
- a) Construction plans and specifications
 - b) Full Copy of Solicitation for Construction Contract
 - c) Award Process and Evaluation Criteria including abstract of offers (Past Performance must be an element of evaluation criteria)
 - d) Responsibility of Determination of Successful Contractor
- 3) POST- AWARD
Fully Executed contract
- 4) POST CONSTRUCTION
- a) Operations and Maintenance Manual
 - b) Record drawings
 - c) FEMA certification documentation
- C. The District will coordinate with the USIBWC and DHS on DHS design and construction proposals, general scheduling activities, levee construction activities, and potential flood events or irrigation releases as they may impact construction activities.
- D. The District will provide all solicitation and bidding services, and construction contract administration services, including QA/QC, safety, inspection, and submittal reviews.
- E. The District will provide a detailed operations and maintenance procedure manual and as built record drawings for the rehabilitated levee.
- F. The District or the District's Contractor will provide the USIBWC the design firm representative in defense of any design issues that may arise throughout design and construction and for the designed life of the levee (30 years). The District and the District's Contractor will not be responsible for levee failures that result from substandard level of operations and maintenance by USIBWC.
- G. The District and the District's Contractor will incorporate language substantially similar to the Federal Acquisition Regulation (FAR) as shown in the Matrix and FAR part 52.301 for firm fixed price construction contracts to the fullest extent possible. Workmanship, warranty, liability, and insurance are paramount for incorporation into any construction contract for levee work. Additional guidance is available in FAR part 36 for construction work.
- H. The District or the District's Contractor will provide USIBWC with a Certificate of Liability Insurance in the amount of \$2,000,000 and will name the USIBWC as an additionally insured at no additional cost to the USIBWC.

USIBWC SERVICES

The following services will be performed by the USIBWC:

- A. The USIBWC will provide an Environmental Assessment for the earthen berm work to be performed by the District. Should the District select a floodwall alternative for the levee rehabilitation, any environmental work related to the floodwall must be obtained from the U.S. Department of Homeland Security. For Hidalgo County, Texas segments set forth in the Department of Homeland Security Determination and Waiver Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, dated April 1, 2008, the Secretary of Homeland Security has issued a waiver of certain laws, regulations and other legal requirements.
- B. The USIBWC will provide existing ROW and easement documents to the District for their use in design and construction activities.
- C. The USIBWC will provide LiDAR data for Hidalgo County and for portions of Mexico that border Hidalgo County.
- D. The USIBWC will review the design and construction plans and will provide compliance conformance prior to construction.
- E. The USIBWC will provide a local contact for coordination of field activities during design and construction.

Delivery and Schedule:

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The District shall provide written updates, along with a copy of the updated Project Schedule, via email by the last day of each month to the USIBWC during the progress of the work.

Period of performance for overall project completion will be 365 calendar days following the issuance of the IWO.

The District will provide a detailed operations and maintenance procedure manual and as built record drawings for the rehabilitated levee work within 60 calendar days of construction completion.

It is important to note that this IWO is executed by both parties with the understanding that there will be no exchange of funds between the parties.

FOR THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER
COMISSION

BY: _____ Date: _____
Carlos Marin, PE
Commissioner, USIBWC

FOR HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

BY: _____ Date: _____
Juan D. Salinas
Chairman of the Board

MOU IBM07A0011
Hidalgo County Drainage District No. 1
and International Boundary and Water Commission, U.S. Section
Individual Work Order (IWO) No. 6

Background:

The Hidalgo County Drainage District No. 1 (District) and the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC) have agreed to jointly coordinate design and construction activities for rehabilitation of specific USIBWC levees of the Lower Rio Grande Flood Control Project (LRGFCP) within Hidalgo County, Texas. Pursuant to this agreement, the USIBWC and the District entered into a Memorandum of Understanding (MOU No. IBMO7A001 1, dated July 16, 2007) which outlines general authorities and requirements under which the two agencies will operate. Under the MOU, the District will perform work on specific levee reaches identified by IWO in accordance with USIBWC standards and design water surface elevations, coordinate with USIBWC personnel on geotechnical investigations, land easement acquisition, design and construction activities, and turn over the operation and maintenance of the completed works to the U.S. Government. The Parties agreed that liability concerns regarding the District performing work on the USIBWC levees of the LRGFCP were to be specifically addressed in this IWO.

Scope of Work:

The specific levee reach for this IWO starts at the LRGFCP levee East of Progreso Lakes and runs west to just west of Rosario Banco, Lower Rio Grande Valley National Wildlife Refuge, said distance being approximately 6.20 miles. On those areas of the levee reach requiring rehabilitation as established by USIBWC, USIBWC tasks HCDD1 with raising the levee to contain the design flood and insuring the control of levee through seepage and under seepage. On those areas of the levee reach not requiring levee rehabilitation as established by USIBWC, USIBWC authorizes HCDD1 access to the levee to perform work tasked by DHS subject to USIBWC project approval. The levee reach can be rehabilitated with an earthen berm structure, floodwall, or a combination thereof. The top of the rehabilitated structure shall not exceed USIBWC provided top-of-levee elevations. The District shall provide information to the USIBWC regarding the design of the levee sufficient to meet FEMA criteria for certification in accordance with 44 Code of Federal Regulations (CFR) Section 65.10.

The District shall provide all labor, equipment, and materials required to fully fund necessary geotechnical investigations, easement acquisition, design, construction, and field construction management activities for rehabilitation of the levee reach described herein.

Design:

- 1) Assimilation, review, analysis, and evaluation of all historical information related to the project, including: a) geotechnical reports, b) right-of-way (ROW) maps, c) USIBWC hydraulic model, d) LiDAR data for Hidalgo County, and e) environmental assessments.
- 2) Surveying of ROW, including preparation of plats and legal descriptions for easement

acquisition, including those temporary ones required for construction. Easement acquisition on behalf of the U.S. Government.

- 3) Additional geotechnical investigations as warranted after review of the available geotechnical information provided by the USIBWC.
- 4) Preparation of plans and specifications for levee raising, including modification of structures, installation of closure devices and seepage control. Plans and specifications shall be in accordance with soils recommendation report, USIBWC requirements and construction industry standards. Design criteria for earthen berm structure includes a minimum 16 foot top levee width, 3:1 riverside levee slope and 3:1 landside levee slope, engineered soil materials, 95% compaction unless otherwise recommended by the geotechnical engineer, and a 15 foot ROW width outside of both the riverside and landside levee toes for maintenance purposes. Absolute minimum landside slope shall be no steeper than 2.5:1. All work shall be done in accordance with the certification requirements of 44 CFR Section 65.10.
- 5) Design criteria for concrete floodwall structure includes a minimum 16 foot top of levee width, vertical face on riverside with a maximum height of new USIBWC top of levee elevation; if using the concrete floodwall the top of the floodwall elevation shall be equal to the top of levee elevation and 3:1 landslide levee slope, soil materials as per U.S. Army Corps of Engineers specification for backfill behind floodwall; 95% compaction unless otherwise recommended by the geotechnical engineer, and a 15 foot ROW width outside of the riverside bottom of wall and a 15 foot ROW width outside the landslide levee toe for maintenance purposes. Absolute minimum landslide slope shall be no steeper than 2.5:1. All work shall be done in accordance with the certification requirements of 44 CFR Section 65.10.
- 6) Coordination with local entities, including landowners, irrigation districts, U.S. Fish and Wildlife Service, Department of Homeland Security (DHS) and any other interested governmental or nongovernmental organizations.
- 7) Preparation of a Critical Path Method (CPM) Microsoft (MS) Project Schedule for the work, with major milestones and durations provided for all geotechnical, design, construction and certification elements. Schedule shall be updated on a monthly basis and progress compared to the baseline schedule. Monthly progress meeting via telecom, with minutes prepared within one week of meeting.

Construction:

Construction shall be in conformance with standards common in construction industry practice, including American Society for Testing and Materials (ASTM), Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, and American Association of State Highway and Transportation Officials (AASHTO). The District shall comply with all applicable provisions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, 2003, or latest edition, and the Federal Occupations

Safety and Health Administration, 29 CFR 1926- Construction Standards. The District shall provide all funding, oversight, inspection, and contract solicitation and administration for the work.

Technical Representatives:

For the USIBWC, Dr. Raymundo Aguirre, Engineering Services Division will be the authorized representative. Godfrey Garza is designated as the authorized representative of the District. Patrick Daize is designated as the local USIBWC contact in the Lower Rio Grande Valley for coordination of design and construction activities.

Types of Contracts:

The work will be conducted under contract between the District and competitively selected engineering consultants and competitively awarded construction contracts or subcontracts. Some work may be done with District forces.

Obligations:

DISTRICT SERVICES

The following design and construction services will be performed by the District, or the District's contractor:

- A. The District shall review all ROW and geotechnical information and determine the need for additional ROW or geotechnical investigations with the specific concurrence of the USIBWC. If required, the District shall secure, in accordance with applicable law, the services of appropriate consultants for these activities, and shall acquire any additional ROW needed on behalf of, and in the name of, the United States of America. The District shall insure that the design is done in accordance with current Corps of Engineer guidance (EM 1110-2-1902 Slope Stability, EM 1110-2-569 Design Guidance for Levee Under Seepage, and EM 1110-2-1913 Design and Construction of Levees on Control of Under Seepage and Through Seepage for the Levee). The design shall meet the current FEMA criteria (44 CFR 65.10) for levee certification using the design flood information and design water surface elevations provided by the USIBWC.
- B. The District shall submit to the USIBWC for review and approval all interim and final deliverables for design and construction of rehabilitation of the levee reach identified herein. The Government shall have 21 days to review and provide compliance conformance of the deliverables. All deliverables will be provided in both hard copy and electronic format. The deliverables are as follows:
 - 1) PRE-DESIGN DELIVERABLES
 - a) Additional geotechnical investigation reports or seepage analysis reports
 - b) Preliminary Engineering Report
 - c) Easement acquisition documents, including plat, legal description and acreage calculations

- d) Fully executed and recorded easement instruments
- 2) PRE-CONSTRUCTION CONTRACT AWARD DELIVERABLES
 - a) Construction plans and specifications
 - b) Full Copy of Solicitation for Construction Contract
 - c) Award Process and Evaluation Criteria including abstract of offers (Past Performance must be an element of evaluation criteria)
 - d) Responsibility of Determination of Successful Contractor
 - 3) POST- AWARD
 - Fully Executed contract
 - 4) POST CONSTRUCTION
 - a) Operations and Maintenance Manual
 - b) Record drawings
 - c) FEMA certification documentation
- C. The District will coordinate with the USIBWC and DHS on DHS design and construction proposals, general scheduling activities, levee construction activities, and potential flood events or irrigation releases as they may impact construction activities.
 - D. The District will provide all solicitation and bidding services, and construction contract administration services, including QA/QC, safety, inspection, and submittal reviews.
 - E. The District will provide a detailed operations and maintenance procedure manual and as built record drawings for the rehabilitated levee.
 - F. The District or the District's Contractor will provide the USIBWC the design firm representative in defense of any design issues that may arise throughout design and construction and for the designed life of the levee (30 years). The District and the District's Contractor will not be responsible for levee failures that result from substandard level of operations and maintenance by USIBWC.
 - G. The District and the District's Contractor will incorporate language substantially similar to the Federal Acquisition Regulation (FAR) as shown in the Matrix and FAR part 52.301 for firm fixed price construction contracts to the fullest extent possible. Workmanship, warranty, liability, and insurance are paramount for incorporation into any construction contract for levee work. Additional guidance is available in FAR part 36 for construction work.
 - H. The District or the District's Contractor will provide USIBWC with a Certificate of Liability Insurance in the amount of \$2,000,000 and will name the USIBWC as an additionally insured at no additional cost to the USIBWC.

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