

Website: www.atlashall.com

ATLAS & HALL, L.L.P.
ATTORNEYS AT LAW
P.O. BOX 3725 (78502-3725)
818 W. PECAN BLVD.
MCALLEN, TEXAS 78501
TEL. (956) 682-5501 FAX (956) 686-6109

STARR COUNTY OFFICE
200 N. BRITTON AVE.
RIO GRANDE CITY, TEXAS 78582
TEL. (956) 488-1896
FAX (956) 488-6482

September 17, 2010

Total Commitment, LLC
11435 Bryan Rd.
Mission, Texas 78573

Certified Mail Return Receipt
Requested 7005 1820 0003 7216 0064

Insurors Indemnity Company
225 S. Fifth Street
Waco, Texas 76702

Certified Mail Return Receipt
Requested 7005 1820 0003 7216 0071

Andy Alvarez
Attorney in Fact for
First Sealord Surety, Inc.
Valley Insurance Providers
620 W. Ferguson
Pharr, Texas 78577

Certified Mail Return Receipt
Requested 7005 1820 0003 7216 0088

RE: Notice of Intention to Terminate Contract By and Between Hidalgo County and Total Commitment, LLC (the "Contract"); Insurors Indemnity Company Bond No. CNB-10170-09 (the "Performance Bond")

Dear Ladies and Gentlemen:

This firm represents the County of Hidalgo (the "Owner") with respect to the above referenced Contract. In accordance with the provisions of Section 2253.071 of the Texas Government Code, the above referenced Contract and the above referenced Performance Bond, Hidalgo County intends to take action to terminate the Contract due to Total Commitment, LLC (the "Contractor") failure to perform the Work in accordance with the Contract Documents on the project (the "Project").

In connection therewith, enclosed please find letters from the engineer for the Project addressed to the Contractor dated June 22, 2010, July 12, 2010 and August 31, 2010 respectively. As of this date, Contractor has not mobilized Contractor's forces.

Pursuant to the provisions of Article 15.02 of the General Conditions of the Contract, (copy enclosed) and Section 2253.071 of the Texas Government Code and the Performance Bond, this letter shall serve as notice from the Owner that Owner in accordance with Article 15.01 of the General Conditions (copy enclosed) intends to take

September 17, 2010
Correspondence
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action to terminate the Contract on or after seven (7) days from the date of this letter.

By this letter Owner hereby demands that Insurors Indemnity Company make arrangements to have the Project completed in accordance with the terms of the Performance Bond.

Very truly yours,

ATLAS & HALL, LLP

By: 

Stephen L. Crain

SLC/mt

Enclosures

cc: Rene Ramirez
Hidalgo County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

Commissioner Pct. # 2, Hector "Tito" Palacios
Attn: Agapito Vargas
301 E. State
Pharr, Texas 78577

fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon

seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION*

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS*

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to

August 31, 2010

Total Commitment, LLC
11435 N. Bryan Rd.
Mission, Tx. 78573

ATTN: Pedro A. Gutierrez Jr. and Sylvia Gutierrez
Owners

REF: Hidalgo County Precinct #2
C-CAP-09-288-08-04
Esperanza Estates Subdivision

SUBJ: "FINAL NOTICE ESPERANZA ESTATES SUBDIVISION"

Dear Mr. Gutierrez:

According to the walk through meeting on Esperanza Subdivision and Millennium Engineers Group report, the conclusion was that the low oil content found on the asphalt plus the lack of the appropriate equipment when the asphalt was applied resulted on low density, asphalt shoving and cracks all along Esperanza Street. Moisture found on the Sub-grade and on the Base came from the top according to Millennium's report.

After all the above mentioned evidence, we concluded that you must re-do the work on the whole street, meaning:

1. Take away all curb and gutter, leaving in place curb inlets.
2. Get rid of all asphalt.
3. Move the caliche to the side.
4. Proof Roll and fix all soft spots (if any) on the sub-grade.
5. Place back the caliche (density test will be required).
6. Lay concrete curb and gutter (strength test will be required).
7. Apply emulsified oil and new asphalt.

All the above recommendations must be according to plans and specifications provided by the engineer for this project. **Contractor must mobilize by no later than Tuesday, September 7, 2010 and be completed by September 28, 2010.** If you have any questions, please contact me at 956.968.8800.

Respectfully,
DOS LOGISTICS, INC.


Luis J. Nava, P.E.

Project Manager

Cc: Mr. Agapito Vargas, HCCAP Executive Director

July 12, 2010

Total Commitment, LLC
11435 N. Bryan Rd.
Mission, Tx. 78573

ATTN: Pedro A. Gutierrez
Owner

REF: Hidalgo County Precinct #2
C-CAP-09-288-08-04
Esperanza Estates Subdivision

SUBJ: Meeting Minutes

Dear Mr. Gutierrez:


According to the meeting that took place at the Hidalgo County Precinct No.2 office today, July, 12, 2010, between Total Commitment represented by Mr. Armando Gutierrez, Hidalgo County Border Colonia Access Program (HCBCAP) represented by Mr. Agapito Vargas and Mr. Eralio Palacios and Dos Logistics, Inc. represented by Mr. Hugo Gonzalez P.E. and myself, Mr. Armando Gutierrez pledged to the following:

1. Provide construction schedule to remove and replace defective items.
2. Remove section of curb and gutter that was defective, look for possible storm sewer leak, back fill with stabilized sand-cement and replace curb and gutter.
3. Remove all Asphalt, re-test caliche base as directed by Engineer, fix soft spots (if any), prime and relay new asphalt according with plans and specifications.

These items must be completed no later than July 23, 2010. If you have any questions, please contact me at 956.968.8800.

Respectfully,

DOS LOGISTICS, INC.


Luis J. Nava, P.E.
Project Manager

Cc: Mr. Agapito Vargas, HCBCAP Director

Corporate Office

June 22, 2010

Total Commitment, LLC
11435 N. Bryan Rd.
Mission, Texas 78573

ATTN: Mr. Pedro A. Gutierrez - Owner

REF: Hidalgo County Precinct #2
C-CAP-09-288-08-04
Esperanza Estates Subdivision
Certified # 7010-0780-0000-4874-9843

SUBJ: Final Inspection Deficiencies

Dear Mr. Gutierrez,


During final inspection of the above reference Project, it was discovered that failures had occurred behind curb and gutter along drainage trunk line. It was also noted that several cracks had surfaced on asphalt paved area along with failed test reports of asphalt core densities.

To date as per your notice to mobilize on May 20, 2010 no action has occurred.

Pursuant to the provision of Article 13.06, " Corrective or Removal of Defective Work " , of the Standard General Condition of the Construction Contract the "Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out or relating to such corrections or removal (including but not limited to all costs or repairs or replacement of work or others)". Contractor **shall immediately** take such measures as are necessary to complete such work or remedy such deficiencies.

These items must be completed prior to acceptance by the Engineer. If you have any questions, please contact me at 956.968.8800.

Respectfully,
DOS LOGISTICS, INC.


Luis J. Nava, P.E. 6/22/10
Project Engineer

Cc: Agapito Vargas, Border Colonia Access Director, Hidalgo County Pct. # 2