



## AGREEMENT FOR CONSTRUCTION SERVICES

This Agreement for Construction Services ("Agreement") between Williamson County, Texas, a political subdivision of the State of Texas ("Owner") and Myers Concrete Construction, LP., ("Contractor") is entered into in accordance with the following terms and conditions:

**ARTICLE 1 SCOPE OF WORK:** The Owner desires to retain Contractor to provide the construction services described herein. The Contractor shall have the overall responsibility for and shall provide complete construction services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the following described construction services, or any phase of such services, in accordance with the Owner's requirements and the terms of this Agreement (hereinafter collectively referred to as the "Work"):

Improve flood damaged sections of the Brushy Creek Regional Trail by constructing 1,500 linear feet of 10 foot wide concrete trail below the dam at Brushy Creek Lake Park east to Champion Park in Williamson County, Texas.

**ARTICLE 2 CONTRACT UNIT PRICE:** Owner agrees to pay to the Contractor, for the satisfactory performance of the Work, \$90.86 per linear feet of a 10 foot wide concrete trail. This price shall be full compensation for furnishing all labor, equipment, time, materials and incidentals necessary to complete the Work pursuant to the Plans and Specifications.

**ARTICLE 3 PLANS AND SPECIFICATIONS:** The Work shall be performed pursuant to and in accordance with the plans and specifications, as well as any revisions made thereto, which are attached hereto as **Exhibit-1** and incorporated herein by reference for all purposes.

### ARTICLE 4 SUBSTANTIAL AND FINAL COMPLETION:

**4.1 Commencement of Work.** Contractor shall commence the Work upon instruction to do so from the Owner and construction shall be deemed to have commenced on the date of such instruction.

**4.2 Substantial Completion.** "Substantial Completion" means the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the Owner's opinion, the Work has progressed to the point such that all

parts of the Work under consideration are fully operational and usable for intended purposes. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify Owner's Designated Representative (sometimes referred to as the "ODR") and request a determination as to whether the Work or designated portion thereof is substantially complete. If the ODR does not consider the Work substantially complete, the ODR will notify the Contractor giving reasons therefore. Failure on the Owner's part to list a reason does not alter the responsibility of the Contractor to complete all Work in accordance with the terms of this Agreement. After satisfactorily completing items identified by the ODR, the Contractor shall then submit another request for the ODR to determine Substantial Completion. If The ODR considers the Work substantially complete, the ODR will prepare and deliver a notice of substantial completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final completion and final payment, shall establish the time within which the Contractor shall finish the punch list, and shall establish responsibilities of the Owner and the Contractor for maintenance and damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the terms and conditions of this Agreement.

Substantial Completion, as defined in this Agreement, for all stages of the Work shall be achieved on or before the following Substantial Completion date:

**WITHIN 60 CALENDAR DAYS FROM THE DATE OF CONTRACTOR RECEIVING OWNER'S INSTRUCTION TO PROCEED.**

Under no circumstances will the time for Substantial Completion exceed this date without a written amendment to this Agreement. **THE TIMES SET FORTH IN THIS AGREEMENT ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT. TIME LIMITS STATED IN THIS AGREEMENT ARE OF THE ESSENCE OF THIS AGREEMENT.**

**4.3 Final Completion.** The Work shall be fully and finally completed within 80 calendar days of receiving the notice to proceed; provided, however, Owner may extend said time period in the event bad weather affects the progress of the Work. Owner shall, at its sole discretion, determine when the Work has been fully and finally completed to its satisfaction.

**4.4 Liquidated Damages.** For each consecutive calendar day after the date of Substantial Completion that the Work is not Substantially Complete, the Owner may deduct the amount of Two Hundred Dollars per calendar (\$200.00/calendar day) from any money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion. The parties stipulate and agree that calculating Owner's actual damages for late completion of the Work would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

Periods of time (i) during which Owner suspends the Work by written notice to Contractor, or (ii) during which Contractor has performed work and is waiting for Owner's acceptance, or (iii) during which a delay directly related to delays caused by "Acts of God", non-county

governmental processes, national emergency, or any other causes beyond Contractor's or Owner's reasonable control, shall not be taken into account in computing the amount retained. In the event that Work received by Owner is found to be incomplete, the period of time from the end of the performance of the Work to the receipt of subsequent performance necessary to produce completed Work will be taken into account in computing the number of days and the amount retained.

## **ARTICLE 5 PAYMENT:**

Contractor shall receive two installment payments. The first one-half (1/2) payment shall be paid to Contractor when one-half (1/2) of all Work has been deemed Substantially Complete by the Owner; provided that Contractor is not in breach of this Agreement at that time. The remaining one-half (1/2) payment shall be paid to Contractor when Final Completion of all Work has been achieved as deemed by the Owner; provided that Contractor is not in breach of this Agreement at that time. The Contractor shall provide an invoice requesting payment to Owner for the said installment payments. Each invoice shall be provided with sufficient detail and substantiation documentation as the Owner may reasonably request to evaluate charges contained therein. Within thirty (30) calendar days after receipt of an invoice, Owner shall pay Contractor the full amount of the invoice, however, if Owner objects to all or any portion of any invoice, it shall notify Contractor within ten (10) calendar days from the date of receipt of invoice of its objection and both parties shall immediately make every effort to settle the disputed portion of the invoice prior to the date that payment is due. In the event the settlement of a disputed portion of an invoice is not reached by the date that payment is due, Owner will pay only that portion that is not in dispute.

When required by Owner and as a prerequisite to payment, Contractor shall provide, in a form satisfactory to Owner, partial lien or claim waivers and affidavits from Contractor and its subcontractors and suppliers for completed Work.

## **ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES AND COVENANTS:**

**6.1** Contractor shall perform all services specifically allocated to it hereunder, as well as those services reasonably inferable and necessary for completion of the Work. The Contractor shall keep the Owner informed of the progress and quality of the Work. Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide the Work described in this Agreement. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations in accordance with the highest standards used in the profession and to further the interests of Owner in accordance with Owner's requirements and procedures. Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Contractor be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.

**6.2** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with

all applicable requirements of the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations.

**6.3** Contractor shall be an independent contractor under this Agreement and shall assume all of the rights, obligations, liabilities, applicable to it as such independent contractor hereunder and any provisions in this agreement which may appear to give Owner the right to direct Contractor as to details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only. Owner shall not retain or have the right to control the Contractor's means, methods or details pertaining to the Contractor's performance of the Work described herein, nor shall Owner have the power to direct the order in which Contractor's Work is performed under this agreement. Owner and Contractor hereby agree and declare that Contractor is an Independent Contractor and as such meets the qualifications of an Independent Contractor under Texas Worker's Compensation Act, Texas Labor Code, Section 406.141, that the Contractor is not an employee of Owner for purposes of this Agreement, and that the Contractor and its employees, agents and sub-subcontractors shall not be entitled to worker's compensation coverage or any other type of insurance coverage held by Owner.

**6.4** As part of Contractor's obligation to coordinate the Work, Contract shall:

- a. cooperate with the ODR and endeavor to further the interests of the Owner and the Work;
- b. provide an on-site, full-time superintendent for the duration of the Work;
- c. visit the Work site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required;
- d. at Owner's request, attend public meetings and hearings concerning the development of the Work;
- e. review all drawings, specifications, and other plans as they are developed by the Owner and/or its Engineer and advise Owner of any error, inconsistency or omission discovered in the drawings, specifications, and other plans;
- f. review the drawings, specifications, and other plans for compliance with all applicable laws and code requirements;
- g. advise Owner of any tests that should be performed;
- h. organize and maintain a competent, full-time staff at the Work site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work;
- i. attend Owner's regularly scheduled Work progress meetings and fully advise the ODR of the Work status including schedule, costs, quality and changes;
- j. assist Owner in obtaining building permits and obtain special permits for permanent improvements as required by law; and
- k. shall coordinate, monitor and inspect the Work of subcontractors to ensure conformance with the drawings, specifications, other plans and with the terms of this Agreement.

**6.5** Contractor shall identify every subcontractor it intends to use for the Work to the Owner in writing at least ten (10) calendar days before entering into any subcontract. Contractor shall not use any subcontractor to which Owner has a reasonable objection. Following Owner's

acceptance of a subcontractor, that subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

**6.6** Contractor's designated representative, which is set forth below Contractor's signature herein below, shall be responsible for the day-to-day management of the Work on behalf of Contractor. The designated representative shall be the Owner's primary contact during the Work and shall be available as required for the benefit of the Work and the Owner. The contractor's designated representative shall be authorized to act on behalf of and bind the Contractor in all matters related to the Work including, but not limited to, execution of Change Orders.

**6.7 NO ALTERATIONS OR CHANGES SHALL BE MADE, HOWEVER, EXCEPT UPON THE WRITTEN ORDER OF THE OWNER, OR THE ODR.**

**6.8** Contractor shall promptly correct any defective Work at Contractor's sole expense, unless the Owner specifically agrees, in writing, to accept the Work.

**6.9** Contractor shall maintain and deliver any close out documents that describe changes or deviations from the original drawings, specifications and plans that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

## **COMMISSIONING AND WARRANTY RESPONSIBILITIES**

**6.10** Contractor hereby warrants that the materials and equipment provided for the Work will be of good quality and new unless otherwise required or permitted by the Owner; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the plans, specifications, drawings and the terms of this Agreement.

**6.11** Contractor shall provide warranty services for the Work for a full 12 months following Final Completion and final payment.

## **ARTICLE 7 OWNER'S RESPONSIBILITIES**

**7.1** The Owner shall:

- a. provide the general schedule for the Work provided Owner is of the opinion such schedule is necessary. The general schedule will set forth the Owner's plan for milestone dates and completion of the Work;
- b. identify a person as its ODR who is authorized to act in the Owner's behalf with respect to the Work. The ODR shall examine the documents submitted by the Contractor and shall render decisions on behalf of the Owner to the extent allowed by Texas law;
- c. to the extent Owner deems necessary, at Owner's cost, Owner will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Work;
- d. to the extent Owner deems necessary, at Owner's cost, Owner will supply an Inspector to the Contractor's crew for the oversight of the Work. Should the Work, as well as the geographical location, allow, the Owner may supply one Inspector for multiple crews;

- e. furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Contractor's services and of the Work;
- f. shall have the right to reject any defective Work. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Contractor on demand; and
- g. Owner shall furnish to the Contractor a sufficient number of plans, drawings and specifications sets.

## ARTICLE 8 INSURANCE AND INDEMNITY

**8.1 Insurance.** The Contractor shall carry insurance in the types and amounts indicated below for the duration of the Agreement, which shall include items owned by Owner in the care, custody and control of Contractor prior to and during the Work. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Agreement, as proof of continuing coverage. Contractor shall update all expired policies prior to submission of any payment requests hereunder. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.

**8.1.1** The Contractor shall provide and maintain, until the Work covered in this Agreement is completed and accepted by the Owner, the minimum insurance coverage in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to Owner.

<u>Type of Coverage</u>		<u>Limits of Liability</u>
a. Workers Compensation		Statutory
b. Employer's Liability		
Bodily Injury by Accident		\$250,000 Ea. Accident
Bodily Injury by Disease		\$250,000 Ea. Employee
Bodily Injury by Disease		\$250,000 Policy Limit
c. Comprehensive general liability including completed operations and contractual liability insurance for bodily injury, death, or property damages in the following amounts:		
COVERAGE	PER PERSON	PER OCCURRENCE
Comprehensive General Liability (including premises,	\$500,000	\$500,000

*completed operations  
and contractual)*

Aggregate policy limits: \$500,000

- d. Comprehensive automobile and auto liability insurance (covering owned, hired, leased and non-owned vehicles):

COVERAGE	PER PERSON	PER OCCURRENCE
Bodily injury (including death)	\$500,000	\$500,000
Property damage	\$500,000	\$500,000
Aggregate policy limits	No aggregate limit	

**8.1.2** The above insurance requirements are not intended to be compounded with the Contractor's standing insurance policies. If the Contractor already has in force insurance policies which provide the required coverage, there is no need to purchase duplicate coverage for this project.

**8.1.3** Policies must include the following clauses, as applicable:

- a. "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) calendar days prior written notice, or ten (10) calendar days for non-payment of premium, has been given to Williamson County."
- b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Williamson County for liability arising out of operations under the Agreement with Williamson County."
- c. "Williamson County, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under Agreement with the Owner." This is not applicable to the workers' compensation policy.
- d. "The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of Williamson County."

**8.1.4** Workers' Compensation Insurance Coverage: In the event that Contractor employs any individual to perform any portion of the Work, Contractor shall comply with Texas Labor Code, §406.096, which requires workers' compensation insurance coverage for all employees providing services on a building or construction project for a governmental entity.

a. Definitions:

(1) Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the Duration of the Work.

(2) Duration of the Work - includes the time from the beginning of the Work until the Work has been completed and accepted by the Owner.

(3) Coverage - Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(4) Persons providing services relating to the Work ("subcontractor") - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform the Work, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services in relation to the Work. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

b. The Contractor shall provide Coverage, based on proper reporting of classification codes and payroll amounts and filing of any Coverage agreements, which meets the statutory requirements of Texas labor Code, §401.011(44) for all employees of the Contractor providing services in relation to the Work, for the Duration of the Work.

c. The Contractor must provide a Certificate of Coverage to the Owner prior to or contemporaneously with the execution of this Agreement.

d. If the Coverage period shown on the Contractor's current Certificate of Coverage ends during the Duration of the Work, the Contractor must, prior to the end of the Coverage period, file a new Certificate of Coverage with the Owner showing that Coverage has been extended.

e. The Contractor shall obtain from each person providing services in relation to the Work, and provide to the Owner:

(1) a Certificate of Coverage, prior to that person beginning any of the Work, so the Owner will have on file Certificates of Coverage showing Coverage for all persons providing services in relation to the Work; and

(2) no later than seven (7) calendar days after receipt by the Contractor, a new Certificate of Coverage showing extension of Coverage, if the Coverage period shown on the current Certificate of Coverage ends during the Duration of the Work.

f. The Contractor shall retain all required Certificates of Coverage for the Duration of the Work and for one year thereafter.

g. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of Coverage of any person providing services in relation to the Work.



- h. The Contractor shall post on the Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services in relation to the Work that they are required to be covered, and stating how a person may verify Coverage and report lack of Coverage.
- i. By signing this Agreement or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services in relation to the Work and all persons providing services in relation to the Work will be covered by workers' compensation coverage for the Duration of the Work, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- j. The Contractor's failure to comply with any of these provisions is a breach of Agreement by the Contractor which entitles the Owner to declare the Agreement void if the Contractor does not remedy the breach within ten (10) calendar days after receipt of notice of breach from the Owner.

**8.1.5 The furnishing of the above listed insurance coverage must be tendered prior to execution of the Agreement.** The Contractor shall not cause or allow any of its required insurance to be canceled; nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Contractor fails to obtain, maintain or renew any insurance required by this Agreement, the Owner may, among other remedies available hereunder or at law, obtain insurance coverage directly and recover the cost of that insurance from the Contractor or declare this Agreement void if the Contractor does not remedy the breach within ten (10) calendar days after receipt of notice of breach from the Owner.

**8.1.6** The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**8.1.7** The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

**8.1.8** The Contractor shall contractually require each person or entity with whom it contracts to provide services in relation to the Work, to comply with each insurance requirement that Contractor must comply with hereunder. More specifically, each person or entity with whom Contractor contracts to provide services on the in relation to

the Work must comply with each insurance requirement under this Article 8 just as if such person or entity was the Contractor. Thus, every reference to Contractor under each insurance requirement of this Article 8 shall mean and include each person or entity with whom Contractor contracts to provide services in relation to the Work. If any such person or entity with whom Contractor contracts to provide services in relation to the Work fails to obtain, maintain or renew any insurance required by this Agreement, the Owner may, among other remedies available hereunder or at law, obtain insurance coverage directly and recover the cost of that insurance from the Contractor or declare this Agreement void if the Contractor does not remedy the breach within ten (10) calendar days after receipt of notice of breach from the Owner.

**8.2 INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, REPRESENTATIVES OF THE OWNER AND THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, ITS VARIOUS DEPARTMENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS IN RELATION TO CONTRACTOR'S PERFORMANCE OF THE WORK DESCRIBED HEREIN. DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE, EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW. THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER.

**8.3** Except for the obligation of Owner to pay Contractor compensation pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

## **ARTICLE 9 BONDS**

**9.1 Performance Bond.** Upon execution of this Agreement, Contractor shall provide a Performance Bond in the amount of 100% of the Contract Price. The surety for a Performance Bond shall meet the requirements of Texas law.

**9.2 Payment Bond.** Upon execution of this Agreement, Contractor shall provide a Payment Bond in the amount of 100% of the Contract Price, as security for the true and faithful payment in full of all subcontractors and persons performing labor, services, materials, machinery, and fixtures in connection with the Work. The surety for a Payment Bond shall meet the requirements of Texas law.

**9.3 Warranty Bond.** Upon execution of this Agreement, Contractor shall provide a Warranty Bond in the amount of 100% of the Contract Price, as security for the true and faithful performance of all warranties set forth in Bid Documents and this Agreement.

## **ARTICLE 10 TERMINATION**

**10.1 Termination for Cause.** If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach is cured within three (3) calendar days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within three (3) calendar days, then and in that instance, the three (3) calendar day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within three (3) calendar days or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies available hereunder and under the law, terminate this Agreement.

**10.2 Termination for Convenience.** The Owner may terminate this Agreement for convenience and without cause or further liability upon ten (10) calendar day's written notice to Contractor. In the event of such termination, it is understood and agreed that only the amounts due to Contractor for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Owner's termination of this Agreement for convenience.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1 Assignment.** Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

**11.2 Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Williamson County, where the Work, is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Work in which the Owner is a party.

**11.3 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

**11.4 Notices.** All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

**11.5 Severability.** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

**11.6 Force Majeure.** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

**11.7 No Waiver of Sovereign Immunity.** Nothing herein shall be construed as a waiver of sovereign immunity by Williamson County.

**11.8 Current Revenues.** Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

**11.9 Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**11.10 Owner's Right to Audit.** Contractor agrees that Owner or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Contractor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees that Owner shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Owner shall give Contractor reasonable advance notice of intended audits.

**11.11 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Work. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement to be effective as the date of the last party's execution.

**OWNER:**

WILLIAMSON COUNTY, TEXAS,  
a political subdivision of the state of Texas

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR:**

MYERS CONCRETE CONSTRUCTION, LP.

By:  \_\_\_\_\_

Printed Name: RANDY MYERS

Title: V. PRESIDENT

Date: 3-30-2012

**Party Representatives**

Owner's Designated Representative:

Randy Bell, Parks Director  
Williamson County Parks  
& Recreation Department  
219 Perry Mayfield  
Leander, TX 78641  
Telephone: (512) 943-1922  
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## **Exhibit-1**

### **PLANS AND SPECIFICATIONS**

Contractor, as a qualified concrete contractor familiar with integral colored concrete trail, shall improve flood damaged sections of the Brushy Creek Regional Trail. The Brushy Creek Regional Trail was planned in 2000 to cover eight miles of linear trail paralleling Brushy Creek from Cedar Park to Round Rock. Six and 3/4 miles have been built and have daily use.

#### **The project functions are as follows:**

- Pour approximately 1,500 linear feet of 10 foot wide concrete trail below the dam at Brushy Creek Lake Park east to Champion Park. Both parks are along Brushy Creek Rd just east of Parmer Lane. An approximate 200 foot section will be required to have toe beams.
- Rock rip rap shall be required in any eroded sections.
- Lengths of units are from measurements in the field. The contractor should verify amounts specific to the trail location in the field.
- This is a very busy trail. Once improvements have begun, completion of the trail improvements will be time sensitive because the trail will have to be closed - with no detour route possible.

#### **Specifications**

The Concrete Trail should be constructed as follows and in accordance with City of Austin Standard Details:

1. The trail will be 10 feet wide and 4 inches thick.
2. Concrete should contain 5 sacks or more of cement per cubic yard of concrete and have a slump of 4 inches or less.
3. Broom finish perpendicular to direction of travel
4. 6x6 #10 welded wire mesh
5. 1/2 inch expansion joint of preformed expansion joint material. Install with "zip strip". Following concrete pour, remove zip strip and install foam backer rod and polyurethane sealant. Color of the sealant to match concrete color.
6. 2" sand leveling bed, compact as needed/required.
7. 12" long 1/2 "smooth dowel and standard expansion cap at 18" o.c.
8. Expansion joints are to be 24' on center.
9. Control joints are to be spaced to match width of walkway.

10. A concrete toe beam on both sides of the sidewalk (where required) will be 8 inches wide by 14 inches deep (under the 4 inch trail) with 3 #4 rebar.
11. Concrete is to be integrally colored with Chem Systems, Inc. (CSI) HBS Integral Color #447 (Lot 5771) at a dosage of 2 lbs. per 94 lb. bag of cement. The color shall match the color of the existing trail.
12. Cleanup shall consist of removal of all spoils, edges backfilled with material suitable to the County flush with the surface of the trail and neatly graded.
13. Trails must comply with the Texas Accessibility Standards of the Architectural Barriers Act, Article 902, Texas Civil Statutes.

## **Trail Notes**

1. Contractor shall stake trail layout for approval by Owner's Representative prior to beginning construction. Set elevations of walks for positive drainage. Trail sections shall follow natural grade maintaining a smooth gradient.
2. If conflicts arise between size of areas and plans, contractor is to contact Owner's Representative for resolution. Failure to make such conflicts known to the Owner will result in contractor's liability to relocate materials.
3. Contractor to tie all trails into existing trails/ramps with a smooth transition.
4. Contractor is responsible for protection of his work from vandalism prior to curing. Contractor shall replace as necessary any section of damaged trail at no additional cost to the Owner.
5. Accessible trails must comply with the Texas Accessibility Standards of the Architectural Barriers Act, Article 902, Texas Civil Statutes.
6. The cross slope of an accessible trail shall not exceed 1 vertical: 50 horizontal (2%).
7. Grade shall not exceed 5% at any location along the trail.
8. Ground and floor surfaces along accessible trails and in accessible spaces including floors, walks, ramps and curb ramps shall be stable, firm and slip-resistant.
9. Contractor shall obtain all permits required and call for inspections as required.
10. Contractor shall provide written description of methods of sequence of construction prior to commencing.
11. Subgrade compaction, materials and construction methods shall conform to Williamson County standards and specifications.
12. If necessary, it shall be the responsibility of the contractor to provide for the safe passage of traffic, and for ingress and egress to public and private property at all times during construction of this project. Any detours constructed by the contractor to fulfill this responsibility will be provided at the contractor's expense. Contractor shall notify owner before negotiating any ingress or egress routes.
13. If necessary, the contractor shall remove and replace all existing fences within easements where such fences conflict with the work. It shall be the contractor's entire responsibility to protect the remaining fence from damage due to slacking. Permanent fencing shall be restored to an equal or better condition. Contractor shall notify owner before removing any fencing.
14. Any obstructions to existing drainage due to the contractor's operations will be removed by the contractor as required at the contractor's entire expense.
15. The furnishing and installation of the sand cushion in the proposed sidewalks and sidewalk ramps will not be paid for directly but shall be considered subsidiary TXDOT specification 531
16. Erosion controls / temporary sediment control fence, and tree protection shall be provided, with details given in method of construction sequence statement.