



## **AGREEMENT FOR CRACK SEAL CONSTRUCTION SERVICES**

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

**ARTICLE 1 SCOPE OF WORK:** The County 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 County's requirements and the terms of this Agreement (hereinafter collectively referred to as the "Work"):

**Crack seal crews and equipment to clean and seal joints and cracks in asphalt pavement that is necessary for the preparation of County's maintained roadways for the application of surface treatments, which shall begin within ten (10) calendar days from the date of County's instruction to commence the Work and construction shall be deemed to have commenced on such date.**

**The Work shall be performed at the work locations designated by County.** Work locations shall be urban (curb and gutter) subdivisions within the central jurisdiction of Williamson County.

**ARTICLE 2 CONTRACT PRICE:** County agrees to pay to the Contractor, for the satisfactory performance of the Work, **\$199.94 per hour**. This price shall be full compensation for furnishing all labor, equipment, time, materials and incidentals necessary to complete the Work. Surface preparation and cleaning shall be considered a part of the Work and will not be measured or paid in addition to the above stated unit price. County shall not be required to pay for any Work that is not performed by Contractor in accordance with the Work Specifications and the terms of this Agreement.

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

**ARTICLE 4 TERM, COMMENCEMENT; PROGRESS AND COMPLETION OF WORK;  
ADDITIONAL WORK:**

**4.1 Initial Contract Term.** The Contractor shall provide the Work described herein, at the Contract Price, for an initial term of ninety (90) Working Days from the effective date of this Agreement.

**4.2 Commencement of Work.** Contractor shall commence the Work within Ten (10) calendar days from the date of County's instruction to commence the Work and construction shall be deemed to have commenced on such date.

**4.3 Progress of Work.** The County's Inspector and the Contractor's Designated Representative must, at least 24 hrs in advance, coordinate the work location(s) and the quantity and exchange of materials for the following day's Work. A minimum of 24 hours notice shall be given to the Contractor's Designated Representative prior to commencing any Work at a new work location. Contractor must achieve Completion, as defined below, of all Work that was coordinated on the prior day by no later than 6:00 P.M. on each particular Working Day.

**4.4 Completion.** "Complete" or "Completion" means the stage in the progress of the Work when, in the County's opinion, the Work has progressed to the point such that all parts of the Work under consideration have been performed in accordance with the Work Specifications and are fully operational. At the conclusion of each Working Day, County's Inspector shall make the determination as to whether the Work for such Working Day shall be deemed Complete. If the County's Inspector does not consider the Work Complete, the County's Inspector will notify the Contractor's Designated Representative giving reasons therefore. Contractor shall complete any uncompleted Work on the following Working Day prior to commencing any new Work at any new work location. Failure of the Contractor to prosecute the Work in the most efficient means possible and complete all Work in accordance with the terms of this Agreement shall constitute a breach of this Agreement by Contractor.

Completion and final payment shall establish responsibilities of the County and the Contractor for maintenance and damage to the Work, warranty and insurance.

**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.**

**4.4 Abandonment by Contractor.** In the event that Contractor fails to attain Completion of the Work as set forth above, the Contractor shall be deemed to have abandoned the Work. In such case, County may exercise any rights and remedies in relation to any payment and/or performance bonds subject of this Agreement in addition to exercising any remedy that may be available to County under this Agreement, the law and/or in equity.

**4.5 Additional Work**

For a period of twenty-four (24) months following the Initial Contract Term, the County reserves the right to add Additional Work that is to be performed at Additional Work Locations and Contractor hereby agrees to provide such Additional Work at the Contract Price set forth above. If County chooses to add such Additional Work, the County shall issue a written change order that describes the Additional Work Locations, the Contract Price, the date for commencement,

the date for Completion of the Additional Work and any additional information necessary to describe the Additional Work.

All terms and conditions of this Agreement shall control and apply to any Additional Work performed by Contractor. For Additional Work, Contractor may submit a request for a contract pricing adjustment for approval by the County if the Contractor can show just cause substantiating an adjustment. The requested adjustment must be for goods and/or services and in no way represent an increase in the Contractor's profits, labor or other overhead. The Contractor's request must include evidence in the form of a certified statement or affidavit from the supplier or manufacturer detailing the price adjustment, the effective date for the adjustment, and any other information requested by the County to verify the adjustment.

A contract price adjustment request will not become effective until after approval of the Williamson County Commissioners Court. Until then, the original Contract Price will remain unchanged. Any Additional Work performed by the Contractor at a not agreed upon price will be deemed to have been done so at the Contractor's risk.

**ARTICLE 5 PAYMENT:** On or about the 25th calendar day of each month, Contractor shall submit invoices to the County's Engineer, in duplicate, indicating the Work performed during the month and the charges therefor. Each invoice shall be provided with sufficient detail and substantiation documentation as the County may reasonably request to evaluate charges contained therein. Within thirty (30) calendar days after receipt of an invoice, the County shall then pay the Contractor the total amount of the approved invoice. However, if County 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, County will pay only that portion that is not in dispute.

When required by County and as a prerequisite to payment, Contractor shall provide, in a form satisfactory to County, 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 County informed of the progress and quality of the Work. Contractor agrees and acknowledges that County 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 County in accordance with County'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 County nor shall the Contractor be released from any liability by reason of such approval by the County, it being understood that the County 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 County 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 County in the results of the Work only. County 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 County have the power to direct the order in which Contractor's Work is performed under this agreement. County 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 County 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 County.

- 6.4** As part of Contractor's obligation to coordinate the Work, Contractor shall:
- a. cooperate with the Engineer and County's Inspector(s) and endeavor to further the interests of the County and the Work;
  - b. provide an on-site, full-time superintendent and crew leader for the duration of the Work that can fluently speak English;
  - c. visit the work location and inspect the conditions to insure an accurate understanding of the existing conditions as required;
  - d. at County's request, attend public meetings and hearings concerning the development of the Work;
  - e. review all specifications and other plans as they are developed by the County and/or its Engineer and advise County of any error, inconsistency or omission discovered in the specifications and other plans;
  - f. review the specifications and other plans for compliance with all applicable laws and code requirements;
  - g. advise County of any tests that should be performed;
  - h. organize and maintain a competent, full-time crew 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. at the written request of the Engineer, immediately remove from the work location any employee or representative of the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform Work in a proper and skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable. In this event, Contractor shall not reinstate such removed individuals without the written consent of the Engineer. The Engineer may suspend the Work without suspending Working Day charges until the Contractor complies with requests hereunder;
  - j. attend County's regularly scheduled work progress meetings, if applicable, and fully advise the Engineer and/or County's Inspector of the Work status including schedule, costs, quality and changes; and
  - k. shall coordinate, monitor and inspect the Work of subcontractors to ensure conformance with the 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 County in writing at least ten (10) calendar days before entering into any subcontract. Contractor shall not use any subcontractor to which County has a reasonable objection. Following County's acceptance of a subcontractor, that subcontractor shall not be changed without County'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 Contractor's Designated Representative shall be the County's primary contact during the Work and shall be available as required for the benefit of the Work and the County. 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 COUNTY, OR THE ENGINEER.**

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

#### **COMMISSIONING AND WARRANTY RESPONSIBILITIES**

**6.9** 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 County; 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 for a period of Twelve (12) months following Final Completion of all Work, including all Additional Work if any, provided by Contractor under this Agreement.

**6.10** Contractor shall provide warranty services for the Work for a full Twelve (12) months following Completion.

#### **ARTICLE 7 COUNTY'S RESPONSIBILITIES**

**7.1** The County shall:

- a. identify a person as its Engineer who is authorized to act in the County's behalf with respect to the Work. The Engineer shall examine the documents submitted by the Contractor and shall render decisions on behalf of the County to the extent allowed by Texas law;
- b. 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 County may supply one Inspector for multiple crews;
- c. 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;
- d. 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, County may have the Work corrected and recover all expenses incurred from Contractor on demand; and
- e. County shall furnish to the Contractor a sufficient number of plans and specifications sets, if applicable.

## 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 County 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 County 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 County.

**8.1.1** The Contractor shall provide and maintain, until the Work covered in this Agreement is completed and accepted by the County, 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 County.

The following coverage limits shall be required at a minimum:

A. Worker's Compensation Statutory – Texas Law

B. Employer's Liability:

|                           |                        |
|---------------------------|------------------------|
| Bodily Injury by Accident | \$500,000 Ea. Accident |
| Bodily Injury by Disease  | \$500,000 Ea. Employee |
| Bodily Injury by Disease  | \$500,000 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 | \$1,000,000 | \$1,000,000    |
| Aggregate policy limits:        |             | \$1,000,000    |

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

| COVERAGE                        | PER PERSON  | PER OCCURRENCE     |
|---------------------------------|-------------|--------------------|
| Bodily injury (including death) | \$1,000,000 | \$1,000,000        |
| Property damage                 | \$1,000,000 | \$1,000,000        |
| Aggregate policy limits:        |             | No aggregate limit |

E. Umbrella Coverage: \$1,000,000

The deductible for an insurance policy required hereunder shall not exceed \$100,000. **Williamson County shall be named as an additional insured under any policy of insurance required hereunder.**

**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 County." 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 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 County.
- (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 County 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 County 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 County:
  - (1) a Certificate of Coverage, prior to that person beginning any of the Work, so the County 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 County 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 County 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 County 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 County.



**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 County 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 County.

**8.1.6** The County 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 County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**8.1.7** The County 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 County 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 County.

**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 COUNTY, AND HOLD HARMLESS THE COUNTY, REPRESENTATIVES OF THE COUNTY 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 COUNTY 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 County 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, County 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 County to Contractor, no present or future partner or affiliate of County or any agent, officer, director, or employee of County, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under County 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.** The total costs of the Work performed during the Initial Contract Term and any Additional Work performed thereafter shall not to exceed Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00). **Upon execution of this Agreement,** Contractor shall provide a Performance Bond in the amount of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00). The surety for a Performance Bond shall meet the requirements of Texas law and said bond must be executed by a corporate surety or sureties in accordance with the Texas Insurance Code.

**9.2 Payment Bond.** The total costs of the Work performed during the Initial Contract Term and any Additional Work performed thereafter shall not to exceed Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00). **Upon execution of this Agreement,** Contractor shall provide a Payment Bond in the amount of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00), 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 and said bond must be executed by a corporate surety or sureties in accordance with the Texas Insurance Code.

**9.3 Warranty Bond.** The total costs of the Work performed during the Initial Contract Term and any Additional Work performed thereafter shall not to exceed Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00). **Upon execution of this Agreement,** Contractor shall provide a Warranty Bond in the amount of Seventy Thousand and No/100 Dollars (\$70,000.00), as security for the true and faithful performance of all warranties set forth in this Agreement and said bond must be executed by a corporate surety or sureties in accordance with the Texas Insurance Code..

## **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 County may terminate this Agreement for convenience and without cause or further liability upon thirty (30) 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 County's termination of this Agreement for convenience.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1 Incorporation and Order of Precedence.** The terms and conditions of the Invitation for Bids (IFB) and its Addenda for the Work subject of this Agreement and the Contractor's bid shall be incorporated into this Agreement by reference. In the event a dispute or conflict arises between (1) terms and conditions of this Agreement, (2) the IFB and its Addenda; and (3) the Contractor's bid; applicable documents will be referred to for the purpose of clarification, resolution and/or for additional detail in the following order of precedence: (1) terms and conditions of this Agreement, (2) the IFB and its Addenda; and (3) the Contractor's bid.

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

**11.3 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 County is a party.

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

**11.5 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 Contractor's Designated Representative or County for whom it is

intended; or sent by U. S. Mail to the last known business address of the Contractor's Designated Representative; or transmitted by fax machine to the last known business fax number of the Contractor's 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.

**11.6 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.

**11.7 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.

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

**11.9 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.

**11.10 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.

**11.11 County's Right to Audit.** Contractor agrees that County 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 County 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. County shall give Contractor reasonable advance notice of intended audits.

**11.12 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and County 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 County.



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.

**COUNTY:**

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

By: 

Printed Name: DAW A GATTIS

Title: County Judge

Date: 12-19-2012

**Party Representatives**

County's Engineer:

Terron Evertson,  
Director of Williamson County  
Road and Bridge  
3151 S.E. Inner Loop, Suite B  
Georgetown, Texas 78626  
Phone: (512) 943-3330

**CONTRACTOR:**

RHB construction, Inc.

By: 

Printed Name: Tracey Hummel

Title: President

Date: 12-11-12

Contractor's Designated Representative:

RHB Construction, Inc.  
Tracey Hummel  
402A West Palm Valley #325  
Round Rock, Texas 78664  
Phone 512-738-1296  
rhbco@yahoo.com

## **EXHIBIT 1 WORK SPECIFICATIONS**

Unless set forth otherwise, all Work performed and all products furnished shall comply with requirements which pertain to the various items of Work included as *Standard Specification for Construction of Highways, Streets and Bridges* of the Texas Department of Transportation, adopted June 1, 2004, which is incorporated herein by reference for all purposes. In the event that any specification set out herein conflicts with the said TxDOT specifications, the specification set out herein shall control and govern.

### **General Information**

Contractor shall provide experienced crack seal crews and equipment to clean and seal joints and cracks in asphalt pavement at the work locations designated by County. This Agreement is intended to assist with the preparation of County maintained roadways for the application of surface and such Work shall begin within ten (10) calendar days from the date of County's instruction to commence the Work and construction shall be deemed to have commenced on such date. Timing is crucial in preparing as many streets as possible prior to the beginning of HMA/ACP/seal coat season.

### **Locations of Work**

The Work shall be performed at the work locations designated by County. Work locations shall be urban (curb and gutter) subdivisions within the central jurisdiction of Williamson County.

### **Scope of Work**

As state above, work locations shall be urban (curb and gutter) subdivisions within the central jurisdiction of Williamson County.

The County will supply the Contractor with 54.1 PN, TxDOT Class B, Asphalt Rubber Blocks. The County Inspector and the Contractor's Designated Representative must designated and coordinate 24 hrs in advance the work locations and quantity and exchange of materials for the next day's work.

### **General Notes**

All construction equipment involved in roadway work shall be equipped, as approved by the County's Inspector, with a permanently mounted 360 degree revolving or strobe warning light with amber lens. This light shall have a minimum lens height of 5 inches and a diameter of 5 inches.

This light shall have a mounting height of not less than 6 feet above the roadway surface and shall be visible from all sides. This equipment shall also have attached at each side of the rear end of the vehicle an approved orange warning flag mounted not less than 6 feet above the roadway surface.

Care shall be exercised to prevent damage to all areas of the right of way. The Contractor shall, at its expense, restore any area disturbed as a result of his operations to a condition as good as, or better than, that present prior to this Agreement.

The Contractor must ensure that the Contractor's Designated Representative and the crew leader of each crew is fluent in English.

#### **BARRICADES, SIGNS, AND TRAFFIC HANDLING**

**This item shall conform to TxDot Specification Item 502, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges 2004. This item will not be paid directly, but shall be included in the crack seal crew bid item.**

Contractor shall provide all traffic control measures to prosecute the Work.

The Traffic Control Plan (TCP) for this project shall be detailed on TxDOT standard plan sheets BC(1) thru BC(12)-07, as provided for in Part VI of the Texas Manual on Uniform Traffic Control Devices. A minimum of two (2) flaggers, two (2) signs CW20-5AL1, CW20-5R or CW20-5L, and 28 inch cones will be required at each location in which crack sealing is in progress.

The Contractor shall maintain a minimum of one through lane in each direction during daylight hours, on all roadways, except with the written approval by the Inspector. Two Lane roadways shall use single lane traffic control, which will require the use of flagmen. This shall not be paid for directly, but shall be considered subsidiary to bid Item 712.

Contractor must have a flagger stationed far enough back from the crack seal operation such that vehicles are not driving on crack seal that adheres to vehicles tires.

Flaggers must comply with all requirements outlined in TxDot Specification Item 502.2B

Access to all side streets and driveways shall be maintained at all times at the sole expense of the Contractor.

The Contractor's Designated Representative shall be a competent person who will be responsible and available on the project site or in the immediate area to ensure compliance with the TCP.

#### **CLEANING AND SEALING JOINTS AND CRACKS**

**This item shall conform to TxDot Specification Item 712, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges 2004. This item will not be paid directly, but shall be included in the crack seal crew bid item.**

Contractor's crews must be equipped with the appropriate melter/applicator for use with 54.1 PN, TxDOT Class B, Asphalt Rubber Blocks.

All cracks shall be blown free of all debris using an air compressor (before sealant is applied) to a depth at least twice the crack width.

Squeegee work shall be required as directed by the County's Inspector.

The finished bead of sealing compound shall be no more than 1/8" thick, and kept as narrow as possible, but not to exceed 4" in width.

The Contractor shall use a crew(s) experienced in the application of crack sealers and flagging operations.

The Contractor shall have stand-by equipment ready and available within 24 hours to resume work should equipment malfunction.