



# Travis County Commissioners Court Agenda Request

**Meeting Date:** July 5, 2011

**Prepared By/Phone Number:** Jason G. Walker/44562; Marvin Brice, CPPB, Assistant Purchasing Agent

**Elected/Appointed Official/Dept. Head:** Cyd Grimes

**Commissioners Court Sponsor:** Judge Biscoe

**Agenda Language: APPROVE CONTRACT AWARD FOR ENVIRONMENTAL MONITORING SERVICES FOR COLORADO RIVER CORRIDOR PLAN, RFS NO. S110046-JW, TO URS CORPORATION.**

Ø **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

This project is for environmental monitoring to assess the pre-mining and post-mining conditions, or impacts, of TXI's Hornsby Bend East and Hornsby Bend West permitted mining sites over three (3) environmental media categories.

On February 7, 2011 five (5) proposals were received, in which TNR staff, evaluated and rated the qualifications of each firm using a standard rating form, as developed by TNR. Upon final completion of the evaluations, Purchasing and TNR staff met separately with Intera and URS Corporation to discuss their proposals and possible ways to reduce their estimated costs, as the budgeted amount for this project was \$60,000. Intera's initial estimated costs were \$85,752 and URS Corporation's were \$65,034.

On April 20, 2011 best and final offers (BAFOs) were solicited of Intera and URS. Neither respondent changed their technical plan, rather each shifted work to personnel with lower hourly rates, as well as lowered prices for equipment, supplies, and sub-consultant services. Intera's BAFO costs were \$78,100 and URS Corporations BAFO costs were \$60,866.

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

TNR and the Purchasing Office recommends approving the Professional Service Agreement with URS Corporation in the amount of \$60,865.74.

Ø **Contract Expenditures:** Within the last N/A months \$0.00 has been spent against this contract/requirement.

Ø **Contract-Related Information:**

Award Amount: \$60,865.74

Contract Type: Professional Services

Contract Period: 7/5/11 – 7/4/12

Ø **Contract Modification Information: N/A**

Modification Amount:

Modification Type:

Modification Period:

Ø **Solicitation-Related Information:**

Solicitations Sent: 157

Responses Received: 5

HUB Information: N/A

% HUB Subcontractor: 32.03%

Ø **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments:

Ø **Funding Information:**

Purchase Requisition in H.T.E.: 517160

Funding Account(s): 001-4908-628-6099, 001-4901-621-6099, 475-4998-760-6099

Comments:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

**TRANSPORTATION AND NATURAL RESOURCES**

STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE



411 West 13th Street  
Executive Office Building  
PO Box 1748  
Austin, Texas 78767  
(512) 854-9383  
FAX (512) 854-4697

May 11, 2011

**MEMORANDUM**

**TO:** Marvin Brice, Assistant Purchasing Agent

**FROM:**  Steven M. Manilla, P.E., County Executive, TNR

**SUBJECT:** Request for Services (RFS), #S110046-JW, Environmental Monitoring

In response to a February 7, 2011, invitation for proposals to conduct environmental monitoring near the TXI mine site near Dunlap Road in Eastern Travis County, the County received five responses. A team ranked the proposals using criteria established in the RFS. The highest ranked proposal came from Intera Geosciences and Engineering, Inc. (Intera) with the second ranked proposal coming from URS Corp. (URS). The remaining three proposals scored significantly lower than the proposals from Intera and URS and were not considered further. Travis County Purchasing and TNR staff conferred separately with both Intera and URS to discuss the proposals and possible ways to reduce the estimated costs. Intera's proposal for the first one year of work was \$85,752, \$24,752 higher than the \$60,000 pre-encumbered. URS proposed a first year cost of \$65,034, \$5,034 higher than the amount pre-encumbered.

On April 20, the Purchasing Office solicited best and final offers (BAFOs) from Intera and URS and revised proposals were received from each. Intera proposed conducting the first year's work for \$78,100 and URS for \$60,866. Neither respondent changed its technical plan, but rather shifted personnel who would conduct some of the work to lower salary professionals and lowered charges for some equipment, subcontracted work, and supplies.

The BAFO from URS provided higher value relative to Intera. But, the overall ranking (based on the scoring criteria) remained the same with Intera first and URS second. The reason is because the technical plan of Intera scored higher than the technical plan of URS, even though both technical approaches are very satisfactory and will accomplish the objectives of the project. Regardless, it is the recommendation of TNR that the offer of Intera be rejected due to its prohibitive cost (\$18,100 higher than currently budgeted)

and that the contract be awarded to URS (\$866 higher than initially budgeted, but remedied as described below). Account and other financial information are below.

<u>Requisition No.</u>	<u>Account No.</u>	<u>Project No.</u>	<u>Com/Sub</u>	<u>Amount</u>
517160	001-4908-628-6099		961/032	\$21,000
517160	001-4901-621-6099		961/032	\$ 866
517160	475-4998-760-6099	X4L008	961/032	\$34,000
517160	475-4998-760-6099	X4L009	961/032	\$ 5,000
			Total	\$60,866

cc: Jason Walker, Purchasing Office  
Donna Williams-Jones, TNR Financial Services  
Jon A. White, Director, NREQ  
Thomas Weber, Environmental Program Manager

# **PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**TRAVIS COUNTY**

**AND**

**URS CORPORATION**

**FOR**

**ENVIRONMENTAL MONITORING SERVICES  
FOR COLORADO RIVER CORRIDOR PLAN**

**CONTRACT NO. PS110046JW -**

PROFESSIONAL SERVICES AGREEMENT (PSA)

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PROFESSIONAL SERVICES AGREEMENT FOR ENVIRONMENTAL MONITORING SERVICES

STATE OF TEXAS §
COUNTY OF TRAVIS §

This Agreement is made and entered into between Travis County, Texas ("COUNTY"), a political subdivision of the State of Texas, (the "COUNTY") and URS Corporation ("CONSULTANT"), a Nevada corporation.

WHEREAS, the COUNTY desires to obtain professional environmental monitoring services of the Colorado River Corridor Plan (the "Project"); and

WHEREAS, CONSULTANT and the employees of CONSULTANT have the ability, expertise, experience, and any necessary professional degrees, licenses, and certificates to furnish the desired professional services;

NOW, THEREFORE, COUNTY and CONSULTANT agree as follows:

1. EMPLOYMENT OF THE CONSULTANT

- 1.1 COUNTY agrees to contract with the CONSULTANT as an independent contractor and, subject to the needs of the COUNTY and the availability of CONSULTANT, CONSULTANT agrees to perform the professional services described in this Agreement.
1.2 The Travis County Commissioners Court orders this Agreement exempted from the bidding requirements of the County Purchasing Act under Section 262.024(a)(4) of the Texas Local Government Code as a contract for personal and professional services.
1.3 COUNTY and CONSULTANT acknowledge and agree that:
1.3.1 CONSULTANT is an independent contractor, operating solely in that capacity, and assumes all of the rights, obligations, and liabilities applicable to it as an independent contractor;
1.3.2 no employee of CONSULTANT will be considered an employee of COUNTY or gain any rights against COUNTY under COUNTY's personnel policies;
1.3.3 no employee of CONSULTANT may claim any benefits from COUNTY other than the payments set forth in this Agreement;
1.3.4 none of CONSULTANT's employees have a contractual relationship with COUNTY.

2. AUTHORITY OF THE COUNTY EXECUTIVE

- 2.1 The County Executive (the "County Executive") of the Transportation and Natural Resources Department ("TNR") will act on behalf of the COUNTY with respect to the

work to be performed under this Agreement. The County Executive has complete authority to interpret and define COUNTY's policies and decisions with respect to CONSULTANT's services.

- 2.2 The County Executive may designate representatives to transmit instructions and receive information. The County Executive will supervise the performance of CONSULTANT's services under this Agreement, and CONSULTANT must cooperate fully with the County Executive in the performance of these services.
- 2.3 In the event of any dispute arising out of the performance of CONSULTANT's services specified in this Agreement, the decision of the County Executive will be final and binding except that CONSULTANT may appeal the County Executive's decision, in writing, to the Travis County Commissioners Court, which has final authority to affirm, reverse, or modify the County Executive's decision.

### **3. SCOPE OF SERVICES**

The CONSULTANT will serve as the COUNTY's professional consultant and must give consultation and advice to the COUNTY during the performance of the CONSULTANT's services.

#### **3.1 BASIC SERVICES**

- 3.1.1 The CONSULTANT is responsible for the complete and professional execution of the work described in this Agreement to the acceptance of the COUNTY EXECUTIVE.
- 3.1.2 The CONSULTANT must perform "Basic Services" which include:
  - (a) all elements of labor, materials and equipment required for the Project, which shall be rendered to the satisfaction of the COUNTY EXECUTIVE and in accordance with the requirements, policies, and standard practices of Travis County;
  - (b) the detailed Scope of Services for the Project, set forth in Appendix A, Scope of Services, attached hereto and made a part hereof (the "Scope of Services");
  - (c) the Work Product, as defined herein, which the CONSULTANT shall submit to the COUNTY for review and acceptance.

#### **3.2. ADDITIONAL SERVICES**

- 3.2.1 "Additional Services" are those services not described in paragraph 3.1. The CONSULTANT must not perform any Additional Services until after receiving a written request for those services from the COUNTY EXECUTIVE.
- 3.3 The CONSULTANT must use all applicable codes as adopted by authority having jurisdiction in performing services under this Agreement.

- 3.4 In the event of any dispute over the classification of the CONSULTANT'S services as "Basic Services" or "Additional Services" under this Agreement, the decision of the COUNTY EXECUTIVE is final and binding upon the CONSULTANT. Such a decision will be based upon the CONSULTANT's Scope of Services as identified in this Agreement.

#### **4. COORDINATION WITH COUNTY**

- 4.1 The CONSULTANT must designate a representative(s) and an alternate representative(s) to communicate with the COUNTY.
- 4.2 The CONSULTANT must not commence work on the Project until receipt of a written notice to proceed issued by the Travis County Purchasing Agent upon the recommendation of the COUNTY EXECUTIVE (the "Notice to Proceed").
- 4.3 The COUNTY will provide the CONSULTANT convenient access to all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to the PROJECT. The CONSULTANT shall make copies of needed information and promptly return all originals. Cost of such copies will be a reimbursable expense. The CONSULTANT'S copies of the foregoing material shall be returned to the COUNTY upon completion of the Project if the COUNTY EXECUTIVE so instructs the CONSULTANT.
- 4.4 The CONSULTANT shall furnish all available data and reasonable assistance necessary to comply with established application, review, and approval processes for any permits, grants, or planning advances required for the Project. The CONSULTANT shall familiarize itself with and comply with established application, review, and approval processes as necessary to assure that reasonable compliance will cause no delay to the performing the tasks required in the Scope of Services.
- 4.5 The CONSULTANT must be available, upon request, to consult with the COUNTY and the COUNTY's officials, employees, agents, representatives, and other consultants regarding the CONSULTANT's services.
- 4.6 The COUNTY will give prompt written notice to the CONSULTANT whenever the COUNTY observes or otherwise becomes aware of any defect in the CONSULTANT's services or of any development that affects the scope or timing or the CONSULTANT's services.
- 4.7 The CONSULTANT must notify the COUNTY in writing within 5 working days of any change in the CONSULTANT's legal name, business structure, or personnel engaged in providing services under this Agreement.
- 4.8 The CONSULTANT must cooperate and coordinate with the COUNTY's staff and other consultants and contractors as reasonable and necessary in the performance of this Agreement and as required by the County Executive.

#### **5. COMPENSATION**

- 5.1 The CONSULTANT will be paid by the COUNTY an hourly fee for all services satisfactorily performed pursuant to this Contract in accordance with the payment schedule attached as Exhibit 1. The CONSULTANT will receive no compensation for work made necessary by the CONSULTANT's errors or omissions.
- 5.2 Hourly rates for the performance of Additional Services are set forth in Exhibit 2.

## **6. PERIOD OF SERVICE; TERMINATION**

- 6.1 The CONSULTANT must perform the professional services described in this Agreement, whether "Basic Services" or "Additional services," in accordance with the Scope of Services set forth in Appendix A and any negotiated modifications to this Agreement.
- 6.2 This Agreement becomes effective on the Effective Date, as defined herein, and will remain in full force and effect for an initial term of one year from the Effective Date.
  - 6.2.1 **OPTION TO EXTEND:** The COUNTY may unilaterally extend this Agreement for three additional one-year periods (individually, an Option to Extend and collectively, the Options to Extend), during which all provisions hereof, except for term and price, will remain unchanged and in full force and effect. The COUNTY must exercise an Option to Extend no sooner than ninety calendar days prior to expiration of the then-current term. The COUNTY has the right to exercise all or a portion of the Options to Extend as it deems necessary.
- 6.3 If the performance by CONSULTANT or the COUNTY of either party's obligations under this Agreement is interrupted or delayed by any occurrence not occasioned by its own conduct, whether the occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Agreement, then it will be excused from performance for a period of time as is reasonably necessary after the occurrence to remedy the effects of the occurrence. Upon the discovery of the occurrence, the party whose performance is affected under this section must notify the other party, and a special meeting will be called by the County Executive to propose a program for a solution to the problem, and if necessary, to establish an estimated period of time of suspension or extension of the Delivery Date. A written request for an extension of time, when properly documented and justified by the circumstances, may be granted by the County Executive.
- 6.4 **SUSPENSION.** The COUNTY may suspend performance of this Agreement at any time for any reason without terminating this Agreement by giving CONSULTANT written Notice of Suspension (a "Notice of Suspension"). The effective date of the suspension is the date on which the CONSULTANT receives the Notice of Suspension, and this date begins the Suspension Period. Performance may be reinstated and this Agreement resumed in full force and effect within 60 days of receipt by the CONSULTANT of written notice of reinstatement from the COUNTY. Upon the effective date of the suspension, the CONSULTANT must follow the procedures described below:

- 6.4.1 Upon receipt of a Notice of Suspension, the CONSULTANT must, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and must prepare a statement detailing the services performed under this Agreement before the effective date of the suspension. Copies of all data collected or assembled in the CONSULTANT's performance of services under this Agreement and copies of all completed or partially completed designs, plans, specifications, studies, reports, and analyses prepared under this Agreement before the effective date of the suspension, including the work product, must be prepared for possible delivery to the COUNTY upon COUNTY's request.
- 6.4.2 During the Suspension Period, the CONSULTANT may submit the above-referenced statement to the COUNTY for payment of the approved services actually performed under this Agreement, less previous payments.
- 6.5 TERMINATION FOR CONVENIENCE. The COUNTY reserves the right to terminate this Agreement for reasons other than default by the CONSULTANT, including for any reason deemed by Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order, by delivering to the CONSULTANT a written notice (a "Notice of Termination"), which will take effect on the tenth day following receipt by the CONSULTANT ("Termination for Convenience"). Termination for Convenience must not be made when termination is authorized under any other provisions of this Agreement and Termination for Convenience must not be taken with the intention of awarding the same or similar contract requirements to another source.
- 6.5.1 Upon receipt of a Notice of Termination and before the effective date of termination, the CONSULTANT must, unless the Notice of Termination otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and must proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within 30 days after receipt of a Notice of Termination, the CONSULTANT must submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.
- 6.5.2 Copies of all completed or partially completed reports, designs, plans, studies, analyses, specifications, and other work product prepared under this Agreement prior to the effective date of termination must be delivered to the COUNTY as a precondition to any final payment due under this Agreement.
- 6.5.3 Upon the above conditions being met, the COUNTY will pay the CONSULTANT for approved services actually performed under this Agreement prior to termination, less previous payments.
- 6.5.4 Failure by the CONSULTANT to submit the required statement described in paragraph 6.5.1 and to comply with the above stated conditions constitutes a waiver by the CONSULTANT of any and all rights or claims to collect the fee

that CONSULTANT may rightfully be entitled to for services performed under this Agreement.

- 6.6 TERMINATION FOR DEFAULT. Either party may terminate this Agreement for the failure of the other party to perform any provisions of this Agreement, through no fault of the terminating party ("Termination for Default") by delivering written notice of termination (a "Notice of Termination for Default") to the defaulting party. The Notice of Termination for Default takes effect on the tenth day following receipt by the defaulting party. In the event of Termination for Default, the COUNTY and its officials, agents, and representatives will not be liable for loss of any profits.

Termination by CONSULTANT:

- 6.6.1 In the event the CONSULTANT exercises its right to terminate for default by the COUNTY, within 30 days after receipt by the COUNTY of the CONSULTANT's Notice of Termination for Default, the CONSULTANT must submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
- 6.6.2 Copies of all completed or partially completed reports, designs, plans, studies, analyses, specifications, and other work product prepared under this Agreement prior to the effective date of termination must be delivered to the COUNTY as a pre-condition to any final payment due under this Agreement.
- 6.6.3 Upon the above conditions being met, the COUNTY will pay the CONSULTANT for approved services actually performed under this Agreement prior to termination, less previous payments.
- 6.6.4 Failure by the CONSULTANT to submit the required statement described in paragraph 6.6.1 and to comply with the above stated conditions constitutes a waiver by the CONSULTANT of any and all rights or claims to collect the fee that CONSULTANT may rightfully be entitled to for services performed under this Agreement.

Termination by COUNTY:

- 6.6.5 Upon receipt by the CONSULTANT of a Notice of Termination for Default and prior to the effective date of termination, the CONSULTANT must, unless the Notice of Termination otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and must proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within 30 days after receipt of a Notice of Termination for Default, the CONSULTANT must submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.
- 6.6.6 Copies of all completed or partially completed reports, designs, plans, studies, analyses, specifications, and other work product prepared under this

Agreement prior to the effective date of termination must be delivered to the COUNTY as a pre-condition to any final payment due under this Agreement.

- 6.6.7 Upon the above conditions being met, the COUNTY will pay the CONSULTANT for approved services actually performed under this Agreement prior to termination, less previous payments.
  - 6.6.8 Failure by the CONSULTANT to submit the required statement described in paragraph 6.6.5 and to comply with the above stated conditions constitutes a waiver by the CONSULTANT of any and all rights or claims to collect the fee that CONSULTANT may rightfully be entitled to for services performed under this Agreement.
- 6.7 If either no funds or insufficient funds are appropriated for a Project, this Agreement will terminate without penalty to COUNTY.
- 6.8 All references to time in this Agreement will be measured in calendar days unless otherwise specified.

## **7. WORK PRODUCT**

- 7.1 In this Agreement, the term "work product" means any reports, plans, specifications, studies, analyses, supporting documentation, and other information (including notes, drawings, diagrams, photographs, videotapes, draft appraisal reports, derived electronic data and/or files, and other materials of any kind) created, obtained, or assembled in connection with performance of this Agreement and with the services rendered in connection with each Project, including all deliverables for the Project as described in Appendix A, Scope of Services.
- 7.2 The CONSULTANT must submit the work product for each task specified in the Scope of Services as set forth in Appendix A and any negotiated modifications to this Agreement. Upon receipt of the work product, the COUNTY will check the submission for completion. A submission will be considered complete if the COUNTY finds that all of the required items have been included in the work product in compliance with the requirements of this Agreement.
- 7.3 If the submission is substantially complete, the COUNTY will notify the CONSULTANT, and the COUNTY'S technical review process will begin.
- 7.4. The COUNTY will notify the CONSULTANT if a submission is incomplete, and the CONSULTANT must perform any professional services that are necessary to complete the work and resubmit it to the COUNTY. This process will be repeated until a submission is complete.
- 7.5 The COUNTY will review the completed work product for compliance with the scope of work. If the COUNTY determines that the completed work product does not comply with the scope of work, the COUNTY will return the completed work product to the CONSULTANT for the CONSULTANT to perform any work necessary to bring the work product into compliance and resubmit it to the COUNTY. This process will be

repeated until the work product is accepted. Work product will be considered accepted if, in the County Executive's opinion, substantial compliance with the requirements of this Agreement has been achieved.

- 7.6 After the work product is considered accepted by the COUNTY, the CONSULTANT must perform any required modifications, changes, alterations, corrections, and additional work necessary to receive final approval by the County Executive. In this Agreement "final approval" means that the County Executive has given formal written recognition that the work product required in the Assignment has been fully carried out.
- 7.7 The CONSULTANT must, without additional compensation, promptly perform any necessary corrections to any work product that is found to be in error or omission. However, after the COUNTY's final approval of a work product, any revisions, additions, or other modifications made at the COUNTY's request for the convenience of the COUNTY that involve extra services and expenses to the CONSULTANT will be paid for as Additional Services.
- 7.8 The decision of the County Executive will be final and binding on the CONSULTANT as to any dispute over:
  - 7.8.1 the classification of the CONSULTANT's work products as complete, accepted, or approved under this Agreement; and
  - 7.8.2 the classification of the CONSULTANT's services as Basic Services or Additional Services under this Agreement.

## **8. CONSULTANT'S RESPONSIBILITY AND LIABILITY**

- 8.1 The CONSULTANT must perform all services and exercise all discretionary powers in a manner consistent with applicable canons of professional ethics and in the CONSULTANT's best professional judgment. In addition, the CONSULTANT must comply with all applicable federal, state laws, and local statutes, rules, and regulations.
- 8.2 The CONSULTANT covenants to undertake no task in which a professional license or certificate is required unless the CONSULTANT or someone under the CONSULTANT's direction is appropriately licensed. If any necessary certification or license expires, is suspended, is revoked, or is canceled, the CONSULTANT must inform the COUNTY of such event within 5 working days.
- 8.3 CONSULTANT warrants that the services to be rendered pursuant to this Agreement, as well as all responsibilities of CONSULTANT arising under this Agreement, will be performed in accordance with the standards customarily provided by an experienced and competent consultant rendering the same or similar services in Travis County. The CONSULTANT must perform the duties set forth in this Agreement in a professional manner, and nothing in this Agreement will be construed to relieve CONSULTANT of this duty.
- 8.4 Acceptance and approval of work product by the COUNTY does not release the CONSULTANT of any responsibility or liability for the accuracy and competency of the

CONSULTANT's work performed under this Agreement. Neither acceptance nor approval by the COUNTY constitutes an assumption of responsibility or liability by the COUNTY for any defect, error, or omission in the documents prepared by the CONSULTANT.

- 8.5 Any employee of the CONSULTANT, who in the opinion of the COUNTY is incompetent or whose conduct becomes detrimental to the work or coordination with the COUNTY, must, upon the COUNTY's request, be immediately removed from association with the PROJECT.
- 8.6 The CONSULTANT must place his Texas Professional CONSULTANT's seal of endorsement on all documents furnished to the COUNTY, as required by law.
- 8.7 The CONSULTANT expressly acknowledges that this Agreement is a personal and professional services contract and that all duties and responsibilities in it must be performed by the CONSULTANT personally and cannot be assigned or subcontracted, other than as specifically provided in this Agreement, without the prior approval of the Travis County Commissioners Court.
- 8.8 The CONSULTANT warrants that all applicable copyrights, patents, and licenses that may exist on materials used in this Agreement have been adhered to and further warrants that the COUNTY will not be liable for any infringement of those rights and that any rights granted to the COUNTY will apply for the duration of the Agreement. THE CONSULTANT AGREES TO AND MUST INDEMNIFY AND HOLD HARMLESS THE COUNTY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITIES OF ANY KIND, WHETHER MERITORIOUS OR NOT, INCLUDING EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY FEES FOR DAMAGES TO ANY PERSON OR PROPERTY ARISING IN CONNECTION WITH ANY ALLEGED OR ACTUAL INFRINGEMENT OF EXISTING LICENSES, PATENTS, OR COPYRIGHTS APPLICABLE TO MATERIALS USED IN THE CONSULTANT'S PERFORMANCE UNDER THIS AGREEMENT.
- 8.9 INDEMNIFICATION. THE CONSULTANT AGREES TO AND MUST INDEMNIFY AND HOLD HARMLESS THE COUNTY AND ITS OFFICIALS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, SUITS, AND LIABILITY OF ANY KIND, WHETHER MERITORIOUS OR NOT, INCLUDING WITHOUT LIMITATION ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENT ACT, NEGLIGENT ERROR, OR NEGLIGENT OMISSION OF THE CONSULTANT OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS ON ACCOUNT OF, ARISING OUT OF, OR RESULTING FROM, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF THIS AGREEMENT.
- 8.9.1. If any claim, or other action, that relates to the CONSULTANT's performance under this Agreement, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against the CONSULTANT, the CONSULTANT must give written notice to County of the following information:

- (a) the existence of the claim, or other action, within 10 working days after being notified of it;
- (b) the name and address of the person, firm, corporation, or other entity that made a claim, or that instituted any type of action or proceeding;
- (c) the alleged basis of the claim, action or proceeding;
- (d) the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
- (e) the name or names of any person against whom this claim is being made.

8.9.2 Except as otherwise directed, the CONSULTANT must furnish to County copies of all pertinent papers received by the CONSULTANT with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

8.10 DISPUTES AND APPEALS. The Purchasing Agent acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Agent in relation to disputes is void unless otherwise stated in this contract. If the CONSULTANT does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, the CONSULTANT must submit a written notice to the Purchasing Agent within ten calendar days after receipt of the document, notice, or correspondence outlining the exact point of disagreement in detail. If the matter is not resolved to the CONSULTANT's satisfaction, the CONSULTANT may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Agent if the Notice is submitted within ten calendar days after receipt of the unsatisfactory reply. The CONSULTANT then has the right to be heard by Commissioners Court.

## **9. OWNERSHIP OF INFORMATION**

- 9.1 The CONSULTANT must furnish the County with work product as requested, whether or not it is complete at the end of the Project, or upon suspension or termination of this Agreement, as provided in this Agreement. The CONSULTANT has the right to retain copies of the work product for its records.
- 9.2 All work product, including notes, drawings, diagrams, photographs, videotapes, draft appraisal reports, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, data, and other materials of any kind) created, obtained, or assembled by the CONSULTANT, together with all intellectual property and proprietary rights in and to this information, will upon creation, receipt, or assembly become the sole and exclusive property of the COUNTY and upon completion of the Project must be delivered to the COUNTY in an organized fashion with the CONSULTANT retaining a copy. Any reuse by CONSULTANT of any

information described in this paragraph without the specific written consent of COUNTY will be at CONSULTANT's sole risk and without liability or legal exposure to COUNTY.

- 9.3 If the CONSULTANT desires to use or recommends the use of any design, device, materials or process covered by letters or patents of copyright, the CONSULTANT must provide for the use by suitable agreement with the patentee or owner. The CONSULTANT must indemnify and hold harmless the COUNTY from any claims for infringement by reason of the use or recommendation of the use of any patented design, device, materials, or process, or any trademark or copyright used in connection with the work performed by the CONSULTANT under this Agreement.

## 10. MAINTENANCE OF AND RIGHT OF ACCESS TO RECORDS

- 10.1 The CONSULTANT must maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, together with documentation of evaluations and study results for a period of five years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
- 10.2 The CONSULTANT agrees that the COUNTY and its duly authorized representatives are entitled to have access to any and all books, documents, papers, and records of the CONSULTANT that are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

## 11. MISCELLANEOUS

- 11.1 VENUE. This Agreement is governed by and is to be construed in accordance with the laws of the United States of America and the State of Texas, and all obligations under this Agreement are performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.
- 11.2 SEVERABILITY. If any portion or portions of this Agreement are ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it will remain valid and binding.
- 11.3 EQUAL OPPORTUNITY IN EMPLOYMENT. The CONSULTANT must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, disability, or veteran or military reservist status. The CONSULTANT agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit 3, attached hereto and made a part hereof.
- 11.4 CERTIFICATE OF CONSULTANT. The CONSULTANT certifies that neither the CONSULTANT nor any members of the CONSULTANT's firm has:
- 11.4.1 Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bona fide

employee working solely for the CONSULTANT) to solicit or secure the services provided by this Agreement.

- 11.4.2 Agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person other than in connection with carrying out the services to be performed under this Agreement.
  - 11.4.3 Paid or agreed to pay to any firm, organization, or person (other than bona fide employees working solely for the CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the services provided under this Agreement.
  - 11.4.4 The CONSULTANT further agrees that this certification may be furnished to any local, state, or federal governmental agencies in connection with this Agreement and for those portions of the Project involving participation of agency grant funds and is subject to all applicable state and federal criminal and civil laws.
- 11.5 BIDDING EXEMPTION. This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.
- 11.6 NOTICE. Any notice required or permitted to be given under this Agreement by one party to the other must be in writing and must be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the party to whom the notice is given, or on the third day following mailing if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address set forth in this section.

The address of the COUNTY for all purposes under this Agreement, unless such notice is specifically directed otherwise, is:

COUNTY:           Cyd V. Grimes (or successor)  
                      Travis County Purchasing Agent  
                      P.O. Box 1748  
                      Austin, Texas. 78767

with copies to (registered or certified mail with return receipt is not required):

                      Joseph P. Gieselman (or successor)  
                      Travis County Transportation and Natural Resources, County Executive  
                      P.O. Box 1748  
                      Austin, Texas 78767

The address of the CONSULTANT for all purposes under this Agreement, unless such notice is specifically directed otherwise, is:

URS Corporation  
 9400 Amberglen Blvd.  
 Austin, TX 78729

11.7 INSURANCE. The CONSULTANT agrees during the performance of the services under this Agreement to comply with the insurance requirements set forth in Exhibit 4, which is attached and incorporated into this Agreement.

11.8. FORFEITURE OF AGREEMENT.

11.8.1 The CONSULTANT will forfeit all benefits of this Agreement and the COUNTY will retain all performance by the CONSULTANT and recover all consideration or the value of all consideration paid to the CONSULTANT under this Agreement if:

- (a) The CONSULTANT was doing business with any Key Contracting Person at the time of execution of the contract or had done business during the 365 day period immediately prior to the date on which it is executed; or
- (b) CONSULTANT does business with a Key Contracting Person at any time after the date on which the contract is executed and prior to full performance of the contract.

11.8.2 "Was doing business" and "has done business" mean:

- (a) Paying or receiving in any calendar year any money valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
- (b) Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
- (c) But does not include:
  - (1) any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public;
  - (2) any financial services product sold to a Key Contracting Person for personal, family, or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by the CONSULTANT in the ordinary course of its business; or
  - (3) a transaction for a financial service or insurance coverage made on behalf of the CONSULTANT if the CONSULTANT is a national or multinational corporation by an agent, employee or

other representative of the CONSULTANT who does not know and is not in a position that he or she should have known about the Contract.

11.8.3 "Key Contracting Person" means any person or business listed in listed in Attachment 1 to Exhibit 5, attached and incorporated into this Agreement.

11.9 PURCHASE ORDER. The CONSULTANT and its contractors, subcontractors, and vendors must provide goods and services using the purchase order method. A purchase order number will be assigned by the designated representative of the Travis County Purchasing Office. The CONSULTANT and its contractors, subcontractors and vendors must reference the Agreement number and the purchase order number on all invoices to the Travis County Transportation and Natural Resources Department. The terms and conditions contained elsewhere in this Agreement prevail over different or contrary terms in any purchase order. The COUNTY will not pay invoices that are more than the amount authorized by the purchase order.

11.10 PAYMENTS. Payment will be made by check or by warrant upon satisfactory delivery and acceptance of items and submission of a correct and complete invoice to the address below for orders placed by the Purchasing Agent, or as indicated on Purchase Orders placed by other authorized COUNTY offices and/or departments.

Travis County Transportation and Natural Resources  
P.O. Box 1748  
Austin, Texas 78767

11.10.1 In order to be considered "correct and complete," an invoice must include at least the following information:

- (a) name, address, and telephone number of the CONSULTANT and similar information in the event payment is to be made to a different address,
- (b) County Agreement, Purchase Order, or Delivery Order number,
- (c) identification of items or services as outlined in the Agreement,
- (d) quantity or quantities, applicable unit prices, total prices, and total amount, and
- (e) any additional payment information which may be called for by this Agreement.

11.10.2 DISBURSEMENTS TO PERSONS WITH OUTSTANDING DEBTS PROHIBITED.

- (a) In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of the CONSULTANT to the State, the COUNTY or a salary fund, a warrant may not be drawn on a COUNTY fund in favor of the CONTRACTOR, or an agent or assignee of the CONSULTANT until:
  - (1) the County Treasurer notifies the CONSULTANT in writing that the debt is outstanding; and

(2) the debt is paid.

(b) "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the COUNTY.

(c) The COUNTY may apply any funds COUNTY owes the CONSULTANT to the outstanding balance of debt for which notice is made under section 11.10.2(a) above if the notice includes a statement that the amount owed by the COUNTY to the CONSULTANT may be applied to reduce the outstanding debt.

11.11 INTEREST ON OVERDUE PAYMENTS. Accrual and payment of interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.

11.12 PROPERTY TAXES. If the CONSULTANT is delinquent in the payment of property taxes at the time of providing services under this Agreement, the CONSULTANT assigns any payments to be made for services rendered under this Agreement to the Travis County Tax Assessor-Collector for the payment of the delinquent taxes.

11.13 TAXPAYER IDENTIFICATION. The CONSULTANT must provide the COUNTY with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.

11.14 SUCCESSORS AND ASSIGNS. This Agreement is binding upon and inures to the benefit of the COUNTY and the CONSULTANT and their respective successors, executors, administrators, and assigns. Neither the COUNTY nor the CONSULTANT may assign, sublet, or transfer their interest in or obligations under this Agreement without the written consent of the other party hereto. IT IS EXPRESSLY ACKNOWLEDGED THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.

11.15 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PROGRAM REPORTING REQUIREMENTS.

11.15.1 HUB Program Requirements

(a) In consideration of award of this Agreement to the CONSULTANT, the CONSULTANT agrees to maintain a subconsultant relationship with any HUB Subconsultants identified on the HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION Form provided with the CONSULTANT's Proposal and attached hereto as Exhibit 6 and made a part hereof. The CONSULTANT will make good faith efforts to meet or exceed the HUB participation goals in the Professional Services category

for an overall 15.8% for Minority-Owned Business Enterprises (MBE) and an Overall 15.8% for Woman-Owned Business Enterprises (WBE). (Sub-goals: 1.9% African-American, 9.0% Hispanic-American, 4.9% Native/Asian-American) of the Contract Sum. For purposes of this Agreement, all references to "HUB" shall mean "certified HUB." To be considered as a "certified HUB," the subcontractor must have been certified by, and hold a current and valid certification with, any of the following three agencies: (1) The State of Texas; (2) the City of Austin; or (3) the Texas Unified Certification Program. Minimum good faith efforts include, to the extent practical and consistent with standard and prudent industry practices, the following:

- (1) dividing the Work into the smallest feasible portions, to allow for maximum HUB subcontractor participation;
  - (2) providing to HUBs that exhibited genuine interest in bidding on a subcontract adequate information regarding the Project (i.e. plans, specifications, scope of work, bonding and insurance requirements and a point of contact within CONSULTANT's organization);
  - (3) notifying, in writing, three or more HUBs for each scope of work, allowing no less than five working days prior to bid submission, of the planned work to be subcontracted;
  - (4) providing notice of opportunities to minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the information to their members/participants.
- (b) The CONSULTANT may go beyond the good faith efforts listed above when soliciting HUB subcontractors.

#### 11.15.2 Subcontractor Tracking Software System.

- (a) The Travis County Purchasing Office has implemented an electronic subcontracting reporting system (the "Subcontractor Tracking Software System" or the "System") to assist the Travis County Purchasing Office in monitoring, tracking and reporting payments to Subcontractors/subconsultants. The COUNTY understands and believes, based on discussions with representatives of the System vendor and review of documentation accompanying the System, that: (i) the System provides a paperless environment in which transactions are electronically stored and routed; "Payment" and "Payment Verification" alerts are provided by e-mail and fax; (ii) the System will facilitate electronic Subcontractor/subconsultant diversity management, which in turn will improve auditing while cutting costs and shortening the audit cycle from months to hours; (iii) the System will eliminate standard forms and streamline the current manual process of tracking payments to all first-tier Subcontractors/subconsultants by performing all such tracking procedures electronically; and (iv) the System will serve as a tool to improve efficiency, accountability, data accuracy, transparency, and overall communication.

- (b) The CONSULTANT shall designate, and shall require all Subcontractors/subconsultants to designate, a liaison responsible for handling all Subcontractor Tracking Software System reporting. On a monthly basis, the CONSULTANT shall record and submit electronically payments made to all Subcontractors/subconsultants for Work completed through the end of the previous pay period; such electronic recording and submission shall be completed no later than the 15<sup>th</sup> day after such payments are made. The CONSULTANT shall contractually require all Subcontractors/ subconsultants to verify payments by entering such payment data in the System no later than 10 days following the day on which the CONSULTANT enters the Subcontractor/subconsultant payment information as required herein. The CONSULTANT shall attempt to resolve any payment discrepancies or disputes in good faith. The CONSULTANT shall not receive credit towards the HUB, M/WBE and DBE participation goals until reported payments have been verified by entering the payment data into the System as described herein or by providing to the COUNTY payment documentation satisfactory to the COUNTY.
- (c) The CONSULTANT shall report payment information pertaining to each Subcontractor/subconsultant that includes, but is not limited to, business name, certification status, work assignment, original subcontract sum, payment number, percentage and dollars paid during the reporting period. A "Comment" field is available for entering additional information and comments and includes the ability to attach documents.
- (d) Failure by the CONSULTANT to furnish the information required of it described in this paragraph 14.15.2 may result in cancellation of the contract award and contract termination in accordance with the procedures set forth in this Agreement. Additionally, if the CONSULTANT is determined to be in default of these mandatory reporting requirements, it may have such conduct considered against it, in assessment of responsibility, in the evaluation of future contracts with the COUNTY.
- (e) The CONSULTANT shall register, and shall contractually require all Subcontractors/subconsultants to register, with a username and password. Training on how to use the System will be provided by Travis County Purchasing Office HUB staff.
- (f) The COUNTY understands and believes that the Subcontractor Tracking Software System will assist the COUNTY in ensuring compliance with the County's HUB Program, and will allow COUNTY staff to closely monitor The CONSULTANT and all Subcontractors/subconsultants performing Work on the Project. Travis County Purchasing Office HUB staff will conduct periodic post-award compliance reviews to verify that Subcontractors/subconsultants listed by the CONSULTANT performed the work and received payment.

- (g) During the term of this Agreement, the CONSULTANT is encouraged to inform the COUNTY of any problems anticipated or encountered, and of any other concerns, regarding the utilization of HUBs, M/WBEs and DBEs.
- (h) Other information tracked by the System includes increases or decreases in Subcontractor/subconsultant Work assignments, percentage of goal achieved, and substitutions. When substituting a Subcontractor/subconsultant, the CONSULTANT is highly encouraged to utilize HUBs, M/WBEs and DBEs. The CONSULTANT shall notify the COUNTY of any substitutions or changes to Subcontractors/subconsultants in accordance with the procedures described in the System. Such notice shall be sent electronically to the Purchasing Agent or HUB Program Coordinator. The CONSULTANT may be requested to provide evidence that it made a good faith effort to substitute another HUB, M/WBE or DBE Subcontractor/subconsultant but was unable to do so. Approval turn around time will be within 24 – 48 hours. If the CONSULTANT has difficulty in locating HUB, M/WBE or DBE Subcontractors/subconsultants, it should contact the Travis County Purchasing Office HUB staff at (512) 854-4561 or (512) 854-4852.
- (i) The COUNTY understands and believes that other notifications automatically generated by the Subcontractor Tracking Software System include the following: User Registration/Password, Contract Award Notifications, Audit Reminders, Unresponsive HUB Subcontractors, Discrepancy Notifications, HUB Subcontractor Change Requests, Payment Verifications, Vendor Information Verification Notices, Not Meeting the Goals Notification and Contract Closeout. Some notifications listed may include response deadlines.
- (j) **The COUNTY encourages the fostering of mentor/protégé relationships through the Community Mentor Protégé Initiative, and Travis County Purchasing Office HUB staff will cooperate with and assist the CONSULTANT in initiating and/or developing such efforts.**

11.16 **FUNDING OUT.** The COUNTY will make reasonable efforts within its power to obtain, maintain and properly request and appropriate funds from which the payments provided for in connection with this Agreement may be paid. Notwithstanding any provision to the contrary in this Agreement, if either no funds or insufficient funds are appropriated for any payments due under this Agreement for the period covered by such budget or appropriation, this Agreement will terminate without penalty to the COUNTY.

11.17 **FUNDING LIMITATIONS.** Funds for payment on this Agreement will come from the County and/or its funding partners. County funds for payment on this Agreement have been provided through the COUNTY budget approved by the Commissioners' Court for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a

budget has been approved. However, the cost of items or services covered by this Agreement is considered a recurring requirement and is included as a standard and routine expense of Travis County to be included in each proposed budget within the foreseeable future. The County Commissioners Court expects this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Agreement. However, COUNTY cannot guarantee the availability of funds, and enters into this Contract only to the extent funds are made available. The Fiscal Year for COUNTY extends from October 1st of each calendar year to September 30th of the next calendar year.

**THE COUNTY CANNOT GUARANTEE THE AVAILABILITY OF FUNDS FOR COMPLETION OF THE PROJECT AND ENTERS INTO THIS AGREEMENT ONLY TO THE EXTENT THAT FUNDS ARE MADE AVAILABLE FROM THE COUNTY AND/OR THE COUNTY'S FUNDING PARTNERS. AS OF JANUARY 1, 2011, THERE IS SUFFICIENT FUNDING FOR THE FIRST TWELVE MONTHS OF THE PROJECT. FUNDING FOR ADDITIONAL PORTIONS OF THE PROJECT MAY OR MAY NOT BE MADE AVAILABLE BY THE COUNTY OR ITS FUNDING PARTNERS. THERE IS RISK INVOLVED WITH THIS AGREEMENT. THE COUNTY'S OBLIGATIONS UNDER THIS AGREEMENT ARE CONTINGENT UPON THE AVAILABILITY OF FUNDS. IF SUFFICIENT FUNDS ARE NOT AVAILABLE, THE COUNTY WILL NOTIFY THE CONSULTANT IN WRITING WITHIN A REASONABLE TIME AFTER SUCH FACT IS DETERMINED. THE COUNTY WILL THEN TERMINATE THIS AGREEMENT AND WILL NOT BE LIABLE FOR THE FAILURE TO MAKE ANY PAYMENT TO THE CONSULTANT UNDER THIS AGREEMENT.**

- 11.18 **NON-WAIVER OF DEFAULT.** No payment, act, or omission by the COUNTY may constitute or be construed as a waiver of any breach or default of the CONSULTANT which then exists or may subsequently exist. All rights of the COUNTY under this Agreement are specifically reserved and any payment, act, or omission is not to be construed to impair or prejudice any remedy or title to the COUNTY under it. Any right or remedy in this Agreement does not preclude the exercise of any other right or remedy under this Agreement or under any law, except as expressly provided in this Agreement, nor will any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.
- 11.19 **MEDIATION.** When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
- 11.20 **OFFICIALS NOT TO BENEFIT.** If a member of the Commissioners Court belongs to a cooperative association, the COUNTY may purchase equipment or supplies

from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

11.21 CONSULTANT CERTIFICATIONS:

11.21.1 The CONSULTANT certifies that the CONSULTANT

- (a) is a duly qualified, capable and otherwise bondable business entity,
- (b) is not in receivership and does not contemplate same,
- (c) has not filed for bankruptcy,
- (d) is not currently delinquent with respect to payment of property taxes within Travis County, and
- (e) is duly licensed in the State of Texas to perform the work described in this Agreement.

11.21.2 The CONSULTANT represents and warrants that:

- (a) all applicable copyrights, patents and licenses which may exist on materials used in this Agreement have been adhered to;
- (b) the COUNTY will not be liable for any infringement of those rights and any rights granted to the COUNTY will apply for the duration of this Agreement; and
- (c) the CONSULTANT will indemnify the COUNTY, its officers, agents and employees from all claims, losses, damages, causes of action and liability of every kind including expenses of litigation, and court costs and attorney fees for damages to any person or property arising in connection with any alleged or actual infringement of existing patents, licenses of copyrights applicable to materials used in this Agreement.

11.22 CIVIL RIGHTS/ADA COMPLIANCE. The CONSULTANT must provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] as if the CONSULTANT were an entity bound to comply with these laws. The CONSULTANT must not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.

11.23 GRATUITIES. The COUNTY may terminate this Agreement if it is found that gratuities of any kind, including entertainment, or gifts were offered or given by the CONSULTANT or any agent or representative of the CONSULTANT, to any County Official or employee with a view toward securing favorable treatment with

respect to this Agreement. If this Agreement is terminated by the COUNTY pursuant to this provision, the COUNTY will be entitled, in addition to any other rights and remedies, to recover from the CONSULTANT at least three times the cost incurred by CONSULTANT in providing the gratuities.

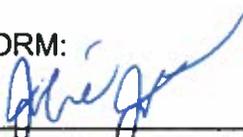
- 11.24 MONITORING. The COUNTY reserves the right to perform periodic on-site monitoring of the CONSULTANT's compliance with the terms of this Agreement and of the adequacy and timeliness of the CONSULTANT's performance under this Agreement. After each monitoring visit, the COUNTY will provide the CONSULTANT with a written report of the monitor's findings. If the report notes deficiencies in the CONSULTANT's performances under the terms of this Agreement, it will include requirements and deadlines for the correction of those deficiencies by the CONSULTANT. The CONSULTANT must take action specified in the monitoring report prior to the deadlines specified.
- 11.25 INCORPORATION OF EXHIBITS AND ATTACHMENTS. All of the exhibits, attachments, and appendices referred to in this Agreement are incorporated by reference as if set forth verbatim.
- 11.26 TEXAS PUBLIC INFORMATION ACT. Notwithstanding any provision in this Agreement to the contrary, disclosure of any information obtained by the County or any of its officials, employees, agents or representatives in connection with this Agreement is subject to the provisions of the Texas Public Information Act and all legal authorities relating thereto, including but not limited to opinions, decisions, and letter rulings issued by the Texas Attorney's General Office.
- 11.27 CONFLICT OF INTEREST QUESTIONNAIRE. If required under Chapter 176 of the Texas Local Government Code, the CONSULTANT must file a completed Conflict of Interest Questionnaire in accordance with the requirements of that Chapter. Within the applicable, authorized time period prescribed in Chapter 176, the CONSULTANT must file the completed Conflict of Interest Questionnaire with the Travis County Clerk, Recording Division, 5501 Airport Blvd., Austin, Texas 78751. The CONSULTANT must file an updated, completed questionnaire with the Travis County Clerk not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. The CONSULTANT should note that the law requires that the County provide access to a filed Questionnaire on the official Travis County Internet website. However, the law does not require that the County release information which is accepted from disclosure under the Texas Public Information Act. The CONSULTANT is solely responsible for the preparation of its Conflict of Interest Questionnaire and the accuracy and completeness of the content contained therein and ensuring compliance with all applicable requirements of Chapter 176 of the Local Government Code.
- 11.28 CERTIFICATION OF ELIGIBILITY. This provision applies if the anticipated contract exceeds \$100,000. By signing this Agreement, the CONSULTANT certifies that it is not on the federal government's list of suspended, ineligible, or debarred contractors. In the event of placement on the list while this Agreement is



APPROVED AS TO FORM:

By: \_\_\_\_\_  
Cyd V. Grimes, C.P.M.  
Travis County Purchasing Agent

APPROVED AS TO FORM:

By: \_\_\_\_\_  
  
Assistant County Attorney

**EXHIBIT 1  
COMPENSATION FOR PROFESSIONAL SERVICES**

**SECTION 1 – COMPENSATION FOR BASIC SERVICES**

- 1.1 The fixed fee for the performance of the Basic Services is **\$60,266.74**
- 1.2 Unless this Agreement has been amended or modified as provided herein, the payments for the tasks described below will be:
- |   |                           |
|---|---------------------------|
| Task 1 – Monitoring Groundwater Availability and Quality: | <b><u>\$35,664.05</u></b> |
| Task 2 – Monitoring Air Quality:                          | <b><u>\$13,700.45</u></b> |
| Task 3 – Monitoring Noise:                                | <b><u>\$10,902.24</u></b> |

**BASIC SERVICES TOTAL:        \$60,266.74**

**SECTION 2 - FIXED FEE**

- 2.1 The CONSULTANT and the COUNTY acknowledge the fact that the fixed fee, shown above, is the total cost of the Basic Services to be rendered under this Agreement. This fixed fee is based upon the labor and non-labor costs and described above, required in the performance of the various phases of work provided for under this Agreement.
- 2.2 In the event of any dispute over the classification of the CONSULTANT's services as either "Basic" or "Additional" services, the decision of the COUNTY EXECUTIVE shall be final and binding on the CONSULTANT.

**SECTION 3 – COMPENSATION FOR ADDITIONAL SERVICES**

- 3.1 For the performance of the Additional Services, the COUNTY shall pay the CONSULTANT under a written amendment to this Agreement. However, the CONSULTANT must not perform any Additional Services until after receiving a written request for those services from the COUNTY EXECUTIVE.
- 3.2 The basis of compensation for the services of principals and employees engaged in the performance of the Additional Services shall be the hourly rates set forth in Exhibit 2.
- 3.3 Work made necessary by the CONSULTANT'S errors or omissions does not constitute "Additional Service," and the CONSULTANT will receive no compensation for any such work.

**SECTION 4 – REIMBURSABLE EXPENSES**

- 4.1 "Reimbursable Expenses" means expenses in addition to the compensation for Basic Services or Additional Services set forth in Exhibits 1 and 2, and includes actual expenditures made by the CONSULTANT, contingent upon prior written authorization

from the COUNTY EXECUTIVE for the following:

- 4.1.1 Expense of reproductions for any record drawings or other information as described in paragraph 4.3 of the Professional Services Agreement.
- 4.2 Unless this Agreement has been amended or modified as provided herein, at no time shall the payments made for each of the above-listed categories of Reimbursable Expenses exceed the following limit:

REIMBURSABLES TOTAL NOT TO EXCEED: **\$599.00**

**SECTION 5 –SCHEDULE OF PAYMENTS**

- 5.1 A Lump Sum Payment shall be made within 30 days of receipt of a correct and complete invoice, as defined in paragraph 11.10.1, for the Deliverables described in the Agreement and/or Appendix A, Scope of Services.

**SECTION 6 –TOTAL AGREEMENT SUM**

- 6.1 The Total Professional Services Agreement Sum, consisting of the Basic Services Fee of **\$60,266.74**, plus the Not-to-Exceed Reimbursable Expense (as listed in Section 4 above) of **\$599.00**, shall not exceed **\$60,865.74**.

**EXHIBIT 2**  
**HOURLY RATES FOR ADDITIONAL SERVICES**

Staff Category	Hourly Rate	2012 Hourly Rate	2013 Hourly Rate	2014 Hourly Rate
Senior Project Manager	\$133.68	\$136.35	\$139.02	\$141.70
Deputy Project Manager	\$88.14	\$89.90	\$91.66	\$93.42
Senior Noise Scientist	\$103.13	\$105.19	\$107.26	\$109.32
Senior Air Scientist	\$112.98	\$115.24	\$117.50	\$119.92
Senior Chemist	\$113.90	\$116.17	\$118.45	\$120.73
Senior Project ITR	\$119.78	\$122.18	\$124.58	\$127.11
Staff Scientist/Engineer	\$77.83	\$79.39	\$80.95	\$82.50
Staff Scientist/Geologist	\$81.88	\$83.52	\$85.16	\$86.79
Staff Air Scientist	\$80.50	\$82.11	\$83.72	\$85.43
Staff Chemist	\$86.66	\$88.40	\$90.13	\$91.86
Junior Staff Scientist/Geologist	\$52.44	\$53.50	\$54.54	\$55.59
Senior Noise Scientist ITR	\$140.85	\$143.67	\$146.48	\$149.30
CADD Tech	\$73.05	\$74.51	\$75.97	\$77.43
Clerical/Administrative	\$50.51	\$51.45	\$52.53	\$53.54
Geosciences Expert Community Liaison	\$200.00	\$204.00	\$208.00	\$212.16
Field Tech	\$45.00	\$51.00	\$52.00	\$53.06

**EXHIBIT 3**  
**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The CONSULTANT will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of the CONSULTANT'S obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The CONSULTANT will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23.CFR 710.405) and all provision of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor.
- E. The CONSULTANT will furnish, upon written request, all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the CONSULTANT'S non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The CONSULTANT will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the

CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the COUNTY or Federal Agency the CONSULTANT may request the COUNTY and United States to enter into such litigation to protect the interest of the United States.

**EXHIBIT 4**

**INSURANCE REQUIREMENTS**

During the life of this Agreement, the CONSULTANT agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$400,000 per occurrence and \$1,000,000 in the aggregate, including coverage on the same for independent subcontractor(s). TRAVIS COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$400,000 per occurrence and \$1,000,000 in the aggregate. CONSULTANT shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$1,000,000.

The CONSULTANT shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance has been approved by the COUNTY. The CONSULTANT shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained. Approval of the insurance by the COUNTY shall not relieve or decrease the liability of the CONSULTANT hereunder.

The required insurance must be written by a company approved to do business in the State of Texas at the time the policy is issued. The CONSULTANT shall furnish the COUNTY with a certification of coverage issued by the insurer. The insurance company shall be subject to the approval of the COUNTY. The CONSULTANT shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER THE COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

EXHIBIT 5  
ETHICS AFFIDAVIT

STATE OF Texas  
COUNTY OF Williamson

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

Name of Affiant: Tyler Jones

Title of Affiant: Vice President

Business Name of CONSULTANT: URS Corporation, a Nevada corporation

County of CONSULTANT: Williamson

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by CONSULTANT to make this Affidavit for CONSULTANT.
2. Affiant is fully aware of the facts stated in this Affidavit.
3. Affiant can read and understand the English language.
4. CONSULTANT has received the list of Key Contracting Persons associated with this professional services agreement, which list is attached to this Affidavit as Attachment 1.
5. Affiant has personally read Attachment 1 to this Affidavit.
6. Affiant has no knowledge of any Key Contracting Person on Attachment 1 with whom CONSULTANT is doing business or has done business during the 365 day period immediately before the date of this affidavit.

*T. Jones*  
Signature of Affiant

9400 Amberglen Blvd.

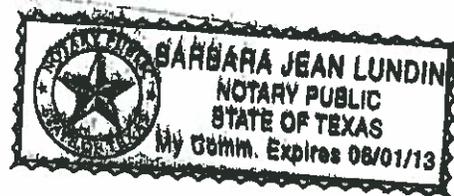
Austin, Texas 78729  
Address

SUBSCRIBED AND SWORN TO before me by Tyler P. Jones on June 20, 2011.

*Barbara Jean Lundin*  
Notary Public, State of TX

*Barbara Jean Lundin*  
Typed or printed name of notary

My commission expires: 06-01-13



**ATTACHMENT 1 TO EXHIBIT 5**  
**LIST OF KEY CONTRACTING PERSONS**  
**FEBRUARY 7, 2011**

**CURRENT**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
County Judge .....	Samuel T. Biscoe	
County Judge (Spouse).....	Donalyn Thompson-Biscoe	MHMR
Executive Assistant .....	Cheryl Brown	
Executive Assistant .....	Melissa Velasquez	
Executive Assistant .....	Josie Z. Zavala	
Executive Assistant .....	Cheryl Aker*	
Commissioner, Precinct 1.....	Ron Davis	
Commissioner, Precinct 1 (Spouse) .....	Annie Davis	Seton Hospital
Executive Assistant .....	Deone Wilhite	
Executive Assistant .....	Felicitas Chavez	
Commissioner, Precinct 2 .....	Sarah Eckhardt	
Commissioner, Precinct 2 (Spouse).....	Kurt Sauer	Daffer McDaniel, LLP
Executive Assistant .....	Loretta Farb	
Executive Assistant .....	Joe Hon	
Executive Assistant .....	Peter Einhorn	
Commissioner, Precinct 3.....	Karen Huber	
Commissioner, Precinct 3 (Spouse) .....	Leonard Huber	Retired
Executive Assistant .....	Garry Brown	
Executive Assistant .....	Lori Duarte	
Executive Assistant .....	Michael Nalick	
Commissioner, Precinct 4.....	Margaret Gomez	
Executive Assistant .....	Edith Moreida	
Executive Assistant .....	Norma Guerra	
County Treasurer .....	Dolores Ortega-Carter	
County Auditor .....	Susan Spataro, CPA	
County Executive, Administrative .....	Vacant	
County Executive, Planning & Budget.....	Rodney Rhoades	
County Executive, Emergency Services.....	Danny Hobby	
County Executive, Health/Human Services .....	Sherri E. Fleming	
County Executive, TNR .....	Steven M. Manilla, P.E.*	
County Executive, Criminal Justice Planning .....	Roger Jefferies	
Director, Facilities Management .....	Roger El Khoury, M.S., P.E.	
Chief Information Officer .....	Joe Harlow	
Director, Records Mgmt & Communications.....	Steven Broberg	
Travis County Attorney .....	David Escamilla	
First Assistant County Attorney .....	Steve Capelle	
Executive Assistant, County Attorney .....	James Collins	
Director, Land Use Division .....	Tom Nuckols	
Attorney, Land Use Division.....	Julie Joe	
Attorney, Land Use Division.....	Christopher Gilmore	
Director, Transactions Division .....	John Hille	
Attorney, Transactions Division.....	Tamara Armstrong	
Attorney, Transactions Division.....	Daniel Bradford	
Attorney, Transactions Division.....	Mary Etta Gerhardt	
Attorney, Transactions Division.....	Barbara Wilson	
Attorney, Transactions Division.....	Jim Connolly	
Attorney, Transactions Division.....	Tenley Aldredge	
Director, Health Services Division.....	Beth Devery	
Attorney, Health Services Division.....	Prema Gregerson	
Purchasing Agent .....	Cyd Grimes, C.P.M.	
Assistant Purchasing Agent .....	Marvin Brice, CPPB	

**CURRENT - continued**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
Assistant Purchasing Agent.....	Bonnie Floyd, CPPO, CPPB, CTPM	
Purchasing Agent Assistant IV.....	Diana Gonzalez	
Purchasing Agent Assistant IV.....	Lee Perry	
Purchasing Agent Assistant IV.....	Jason Walker	
Purchasing Agent Assistant IV.....	Richard Villareal	
Purchasing Agent Assistant IV.....	Oralia Jones, CPPB	
Purchasing Agent Assistant IV.....	Lori Clyde, CPPO, CPPB	
Purchasing Agent Assistant IV.....	Scott Wilson, CPPB	
Purchasing Agent Assistant IV.....	Jorge Talavera, CPPO, CPPB	
Purchasing Agent Assistant IV.....	George R. Monnat, C.P.M., A.P.P.	
Purchasing Agent Assistant IV.....	John E. Pena, CTPM	
Purchasing Agent Assistant III.....	Vacant	
Purchasing Agent Assistant III.....	David Walch	
Purchasing Agent Assistant III.....	Michael Long, CPPB	
Purchasing Agent Assistant III.....	Elizabeth Corey, C.P.M.	
Purchasing Agent Assistant III.....	Rosalinda Garcia	
Purchasing Agent Assistant III.....	Loren Breland, CPPB	
Purchasing Agent Assistant II.....	C.W. Bruner, CTP*	
Purchasing Agent Assistant III.....	Nancy Barchus, CPPB	
HUB Coordinator.....	Sylvia Lopez	
HUB Specialist.....	Betty Chapa	
HUB Specialist.....	Jerome Guerrero	
Purchasing Business Analyst.....	Scott Worthington	
Purchasing Business Analyst.....	Jennifer Francis*	
NREQ Director.....	Jon A. White	
Environmental Program Manager.....	Thomas Weber	

**FORMER EMPLOYEES**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
Purchasing Agent Assistant II	Donald E. Rollack	05/31/11
Special Assistant to Comm. Court	Christian Smith	05/31/11
County Executive, TNR.....	Joseph Gieselman	01/31/12

\* - Identifies employees who have been in that position less than a year.

**EXHIBIT 6**

**HUB DECLARATION AND LIST OF CERTIFIED HUB SUBCONTRACTORS**

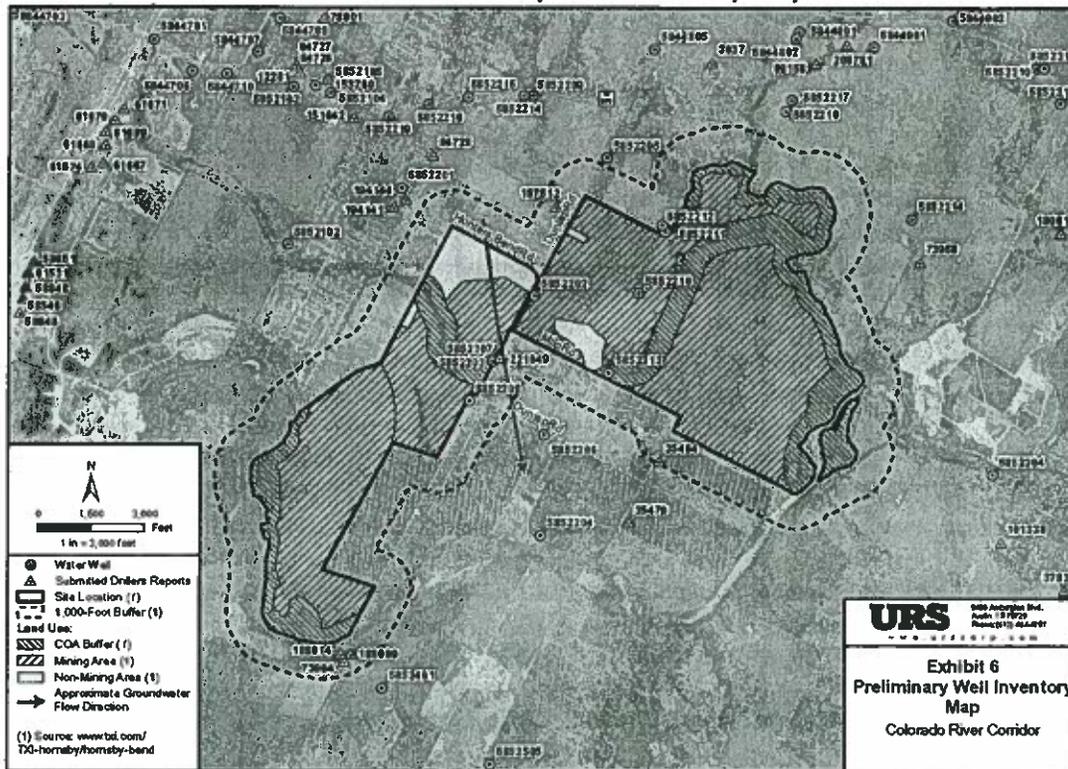
(Insert RFS Attachment 2 at Contract Award)

**APPENDIX A****SCOPE OF SERVICES****Year 1 Tasks****Year 1, Task 1- Groundwater Availability and Quality****Well Inventory**

URS will develop a complete well inventory of wells located within 1000 feet of TXI's mining area and screened within the Colorado River Alluvial Aquifer. URS will create an initial well inventory list using the TWDB database of registered public water supply and private wells. URS has created a preliminary well inventory (Exhibit 7) using the TWDB database in order to understand the level of effort that will be required to complete the well inventory and groundwater monitoring, as well as to better understand the sufficiency of the existing wells for completing the study objectives. The well inventory will be supplemented by URS identifying un-registered wells that are within 1000 feet of the TXI mine or located within an area that is not adequately represented by the well survey. URS will conduct interviews with property owners to identify well presence and, if present, to determine well construction details including screened interval, well diameter, well total depth, well location, top of well casing elevation, and visual inspection for general condition. URS will also interview well owners to determine: well yield, groundwater use, geological information from the well drilling log, and potential permission for property access and inclusion of the well in the groundwater monitoring program.

The final list of wells selected for the monitoring program will include 1) wells located upgradient and downgradient of the mining site, at evenly spaced locations in order to obtain as close to a representative area as possible; and 2) wells where permission for access from the well owner has been obtained. Each well log and well construction details, if available, will be reviewed to determine that the hydraulic zone screened in the well is the same hydrogeologic unit or is hydraulically connected to the alluvium and fluvial terrace deposits that are expected to be mined and potentially dewatered during mining.

**Exhibit 7. Preliminary Well Inventory Map**



After the final list of wells is determined based on the criteria presented above and after consultation with the geoscientist expert, Dr. Jack Sharp, the wells will be surveyed by Landesign Services, Inc., who is a Texas licensed surveyor and is a certified Minority and Woman-Owned Business (M/WBE). The well location and top of casing measuring point will be accurate to within 0.05 feet and 0.15 feet, respectively. This level of accuracy will be sufficient for using the measured groundwater elevations to create potentiometric surface maps of the study area.

**QAPP Development**

URS is experienced in the preparation and implementation of QAPPs using TCEQ and EPA guidelines. URS personnel assisted in the preparation of the first TCEQ Superfund Program QAPP and have prepared numerous QAPPs for state Superfund sites. URS has also prepared QAPPs for several federal Superfund sites and RCRA sites. These QAPPs detail several components of the project, including project management, data/measurement generation and acquisition, assessment and oversight, and data validation and data usability. URS has also implemented many projects utilizing the TCEQ Superfund Program and TCEQ Dry Cleaner Remediation Program QAPPs.

**Groundwater Sampling**

Each groundwater well included in the monitoring program will be sampled during six, bi-monthly events. During each event, groundwater samples will be collected and the depth to groundwater below the surveyed top of casing will be measured, and all wells will be measured within the same 48 hour period to ensure a synoptic potentiometric surface is observed.



Importantly and in addition to the six synoptic water level surveys, URS proposes to install one water level pressure transducer in a centrally located well expected to represent typical groundwater levels within the study area. The transducer with built in data logger, such as an In-Situ Level TROLL 700 or equivalent, will

measure and record water levels in the well at pre-determined time intervals such as once every six hours, and will be programmed for event mode testing at more frequent time intervals when triggered by a pre-determined change in pressure head. The transducer water level data will help identify natural fluctuations to the potentiometric surface that otherwise may not be perceived with bi-monthly readings. Additionally, the transducer data will be compared to precipitation data from relatively nearby LCRA hydromet rain gage data from the Walnut Creek and Webberville Road Station and/or the Austin Bergstrom International Airport (ABIA) meteorological precipitation data. The transducer event mode water level data and precipitation data will provide information for a better understanding of baseline groundwater fluctuations due to rain events or other natural fluctuations that could be potentially misinterpreted if only seen on a bi-monthly time interval.

URS will also note while in the field the presence of any phreatophyte trees and plants that could potentially be affecting groundwater levels. Decreased water levels in areas with large stands of phreatophytes may be most notable during the growing season when transpiration rates of phreatophyte are greatest. To better understand mining related impacts on groundwater availability, we will need to understand potential impacts of phreatophytes on groundwater levels. An understanding of what influence phreatophyte trees have on groundwater level fluctuations will need to be considered while assessing the groundwater elevation data for mining related impacts.

Groundwater samples will be collected from each well in the monitoring program using the TCEQ Standard Operating Procedures (SOP) for low flow/minimal drawdown sampling or the SOP for standard/well-volume sampling methods as prescribed in the Field Sampling Plan/QAPP. The sampling procedure used (low flow or standard) will depend on the particular characteristics of each individual well, such as well yield, and functionality of dedicated pumps installed in production wells.

Groundwater from each well will be sampled for metals (including sodium, potassium, calcium, and magnesium), anions (chloride, sulfate, nitrate-nitrogen, carbonate alkalinity, and bicarbonate alkalinity), TSS, and field parameters (pH, conductivity, dissolved oxygen, turbidity, and temperature). The groundwater samples for metals and anions will be collected in sample containers and preserved as specified in the QAPP. The samples will then be delivered to the LCRA NELAC-accredited laboratory for analysis. Additional laboratory analysis for other water quality parameters, such as salinity, TDS, or other indicators used to evaluate the effect of groundwater pumping on the hyporheic zone of the Colorado River, may be recommended after consultation with Dr. Sharp or after the first round of data is reviewed. Recommendations will take into consideration any budgetary constraints the LCRA laboratory may have.

## Reporting

URS will prepare and submit three documents to Travis County that will cover Year 1 activities. The documents will be a QAPP, a Field Sampling Plan<sup>1</sup>, and a Year 1 Annual Report. Each document will go through the URS ITR process in addition to review by Dr. Sharp. URS will modify the documents as needed to address Dr. Sharp's comments and to include his input.

URS will develop a QAPP that will describe planning, sampling, documentation, sample analyses, and data analyses in sufficient detail to ensure that the groundwater monitoring program produces results which meet TCEQ requirements, i.e., analytical methods meet the levels of required performance and that groundwater monitoring procedures are consistent with TCEQ standards. Whenever possible, TCEQ SOPs for groundwater monitoring and sampling will be followed.



The Field Sampling Plan will provide a final list of wells and a map showing the location of each well to be included in the monitoring program and the rationale for including each well. The Field Sampling Plan will identify the well location for the proposed transducer water level monitoring and will include SOPs for how groundwater levels, field parameters, and groundwater samples for laboratory analysis will be collected. The

<sup>1</sup> The Field Sampling Plan and QAPP combined constitute the Sampling and Analysis Plan. URS plans to submit a consolidated Sampling and Analysis Plan to address Tasks 1, 2, and 3 activities.

Field Sampling Plan will also provide a schedule for when each of the six monitoring/sampling events will take place, when the Draft Year 1 Annual Report will be submitted to Dr. Sharp, and when the report will be submitted to Travis County.

The Year 1 Annual Report will present: a review of field activities performed, field and laboratory groundwater quality data, groundwater elevation data, an interpretation of the water quality and groundwater elevation data including determination of baseline conditions, and recommended trigger levels for future action. The review of field activities performed will include a description of the activities performed (who, what, where, when) and will include presentation of field notes, photographs, and sample collection data sheets. The groundwater elevation and water quality data will be presented in a table format and validated laboratory reports will be presented in an appendix to the Annual Report.

Additional presentation of the data will be used for data interpretation. For the groundwater elevation data, potentiometric surface maps for each of the six synoptic water level surveys will be presented. The groundwater elevation data recorded with the pressure transducer will be presented in a well hydrograph with corresponding precipitation data. The water quality data may be presented in several ways, including Stiff and Piper diagrams or isocontour maps of individual water quality parameters. A range of baseline conditions for groundwater elevation and water quality parameters will be determined based on the interpretation of the data and observed trends and/or anomalies revealed by the data presentation (potentiometric surfaces, well hydrograph, Stiff and Piper diagrams, and isocontour maps).

To determine trigger levels for future action, based on changes to the monitored groundwater physical and chemical baseline conditions, additional data evaluation will be performed. Potentially this may include determination of statistical parameters, such as mean, median, and standard deviation of the values and presentation of the data with histograms or box and whisker plots. Trigger levels may then be assigned after reviewing the statistical analysis of the baseline values.

Trigger levels may also be set in accordance with the TRRP Tier 1 PCLs, or if a particular water quality parameter is not considered to be of concern from a human health standpoint and therefore does not have a PCL (i.e., calcium, chloride, iron, potassium, sodium and sulfate) then the trigger level could be set according to TRRP aesthetics and ecological criteria. The application of TRRP PCLs and aesthetic and ecological criteria as trigger levels would only be applicable for compounds with baseline levels less than the PCL or aesthetics and ecological criteria.

### **Coordination with Dr. Sharp (Community Liaison and Geoscientist Expert)**

The URS Team knows that the local community within the Colorado River Corridor is adamant that 1) the environmental contractor be impartial and independent of TXI, and 2) UT Professor of Hydrogeology, Dr. Jack Sharp, be included in the project. Dr. Sharp's participation as an independent reviewer to the project will add trust and assurance to the community that the URS team is performing without bias. URS is pleased to work with Dr. Sharp and has an existing and trusting relationship with him. Several members of the URS Team are former students of Dr. Sharp and URS Team members have previously interacted with Dr. Sharp while attending hydrogeology lecture series at UT. Additionally, URS Team members presented a talk at the Geological Society of America South-Central Section Meeting, March 2009, in the Water Resource Challenges and Opportunities in North-Central Texas and Surrounding Regions Technical Session presided by Dr. Sharp. The URS Team has not previously worked with Dr. Sharp on a project providing professional services.



The URS Team will consultant with, and seek advice from, Dr. Sharp concerning the physical and chemical groundwater monitoring program. Specifically URS will seek Dr. Sharp's input for and review of the QAPP, Field Sampling Plan, and Year 1 Annual Report. Specific issues that the URS Team anticipates conferring with Dr. Sharp on include: selection of wells to include in the monitoring program, placement and measurement frequency of the water level transducer, addition of any additional water quality analysis, determination of baseline levels based on Year 1 data, and trigger levels for future action.

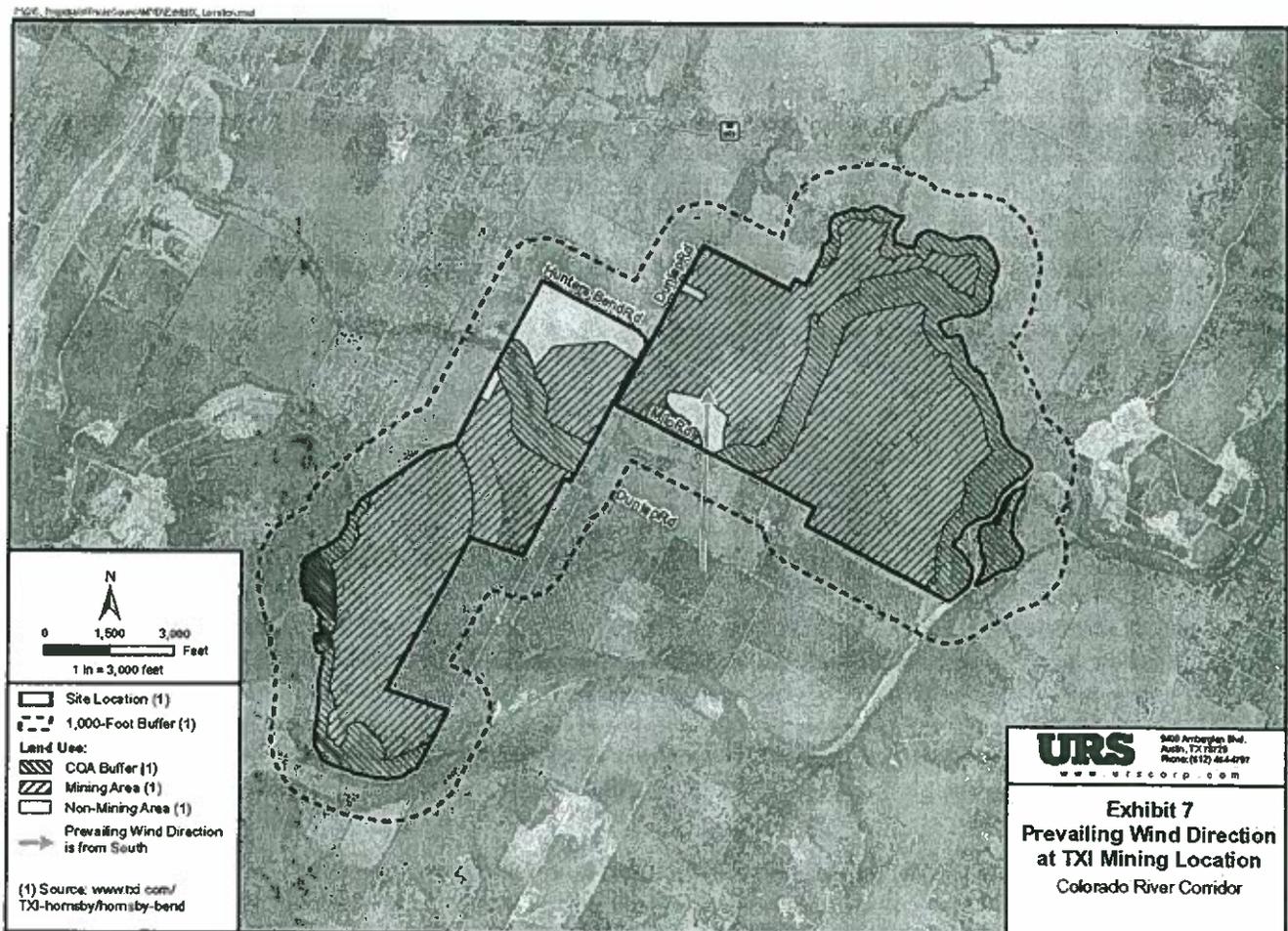
The URS Team will coordinate with Travis County, Dr. Sharp, and the community, as appropriate, for each Year 1 field event and milestone, including (in order) door to door well survey, submittal of the QAPP and Field Sampling Plan (including well inventory), professionally survey well locations, bi-monthly monitoring event (X6), submittal of the Year 1 Annual Report, and the first public meeting.

**Year 1, Task 2 – Air Quality**

URS will conduct baseline air sampling for PM10 and PM2.5 according to the requested Scope of Services, Task 2 – Air Quality.

URS will survey the area downwind of the TXI site to identify candidate baseline sampling sites that are representative of conditions between TXI and receptors of interest (e.g., schools and residential areas). Exhibit 8 displays the prevailing wind direction for the site area. Candidate baseline air sampling sites will: (1) meet relevant EPA site exposure and probe siting criteria; (2) not be unduly impacted by nearby sources; (3) be accessible in all weather conditions; (4) have access to electricity; and (5) be secured, either inside existing locked fencing or by installing temporary fencing around the site. URS will select a preferred baseline monitoring site that meets these criteria, preferably one on public property where site access, security fencing, and electricity can be provided by the land owner at no cost. URS will then present its recommendation to Travis County for approval.

**Exhibit 8. Map with Wind Direction**



URS will obtain any necessary agreements to use the CAPCOG sampling equipment. As CAPCOG’s air monitoring contractor on the Austin-Round Rock Air Toxics Study, URS has already established a successful professional relationship with the CAPCOG Air Quality Program and anticipates no problems in obtaining

permission to use the equipment. Before we deploy the sampling equipment in the field, URS will thoroughly inspect and test the instruments and conduct any needed maintenance procedures or repairs.

URS will develop a Field Sampling Plan/QAPP for the air sampling study that is consistent in both content and format with TCEQ and EPA guidelines for studies of this nature and in accordance with our corporate Quality Management System. If requested by Travis County, we will seek TCEQ review and approval of the air sampling Field Sampling Plan/QAPP before the first samples are collected. Among other things, the Field Sampling Plan/QAPP will describe the sampling site; sampling equipment; sampling frequency, period, and duration; equipment calibrating, operating, and maintenance procedures; and steps taken to maintain and assess data quality.

URS will conduct baseline monitoring at a frequency of once each calendar quarter, for periods of 18 consecutive days, over a total duration of approximately 1 year (i.e., four quarters). URS will install, test, and calibrate the sampling equipment prior to each quarterly sampling period. Since conventional PM10 and PM2.5 sampling instruments are not usually operated continuously unattended for 18 consecutive days, URS or its subcontractor will visit the sampling site on every third day to verify that the instruments are operating properly and maintaining the appropriate flow rates. After each 18-day sampling period is completed, URS or its subcontractor will retrieve the PM10 and PM2.5 filters, complete sample documentation and chain-of-custody information, and ship the filters to a NELAC-accredited laboratory for gravimetric analysis. For security, URS will store the sampling equipment at its Austin air monitoring laboratory between sampling periods.

URS maintains an inventory of weather stations that are available to install and measure wind speed, wind direction, and other pertinent variables at the sampling site; however, as a measure to control costs, we recommend reliance on the National Weather Service meteorological data collected at ABIA. Over an 18-sampling period, on-site meteorological data are unlikely to provide any greater fidelity to the analysis or interpretation of the PM measurement results in an area of relatively flat terrain. The airport data are available in real-time and archive from the TCEQ website.

URS will include the findings of the baseline air study giving the sampling results, assessment of data quality, and recommendations in the Year 1 Annual Report

### **Year 1, Task 3 – Noise Assessment**

The purpose of the noise monitoring study during Year 1 will be to determine existing noise levels in the vicinity of the TXI Hornsby Bend East and Hornsby Bend West sites and at nearby sensitive receptor locations. The results of the Noise Monitoring Study will be used to accurately characterize the existing or baseline ambient noise environment within the project area. The Noise Monitoring Study will also identify significant noise sources near the TXI facilities, as well as to identify noise sources unrelated to TXI. The resulting baseline noise levels will then be used as a comparison tool with future noise levels to determine potential noise impacts once mining operations begin.



For the noise assessment effort, URS will prepare a Noise Field Sampling Plan for the monitoring of existing and future noise levels in the vicinity of the TXI Hornsby Bend East and Hornsby Bend West sites. The Noise Field Sampling Plan will identify significant sources of noise near the TXI sites, identify sensitive receptors located within the project vicinity, determine sensitive receptor locations relative to future mining activities, provide a description of the noise monitoring methodology, and summarize regulatory noise limits applicable to the project. The Noise Field Sampling Plan will be updated as new sources of noise or sensitive receptors are identified within the study area.

Noise sensitive land uses within the greater study area include residential areas, schools, and churches. As a first step to accurately characterize the study area, URS will perform a detailed site reconnaissance in the field to identify all sensitive receptors located near the proposed mining sites. The identified sites may include

residential receptors located within the established Austin's Colony, Chaparral Crossing, and Twin Creek Meadows developments, as well as receptors located within rural settings and emerging developments such as the Watersedge development along the Colorado River. URS will document the type and location of each identified sensitive receptor, including other types of receptors such as parks or day care facilities that may be located within the study area. URS will also document significant noise generation activities from existing TXI mining operations road construction activities as appropriate. Once all sensitive receptor locations are identified, URS will select receptors located near the TXI mining locations that are either close to the project site or can be considered representative of a group of similar sensitive receptor locations close to the project site.

Once representative sensitive receptor sites have been determined, URS will undertake an extensive baseline noise monitoring study following the Noise Field Sampling Plan and incorporating sensitive receptor sites identified during the initial site reconnaissance effort. The objective of the monitoring study will be to determine ambient noise levels in areas located between existing and future surface mining (sand and gravel) activities and at nearby sensitive receptors. Existing noise levels will be monitored at selected sensitive receptors and at other points located on the periphery of the TXI Hornsby Bend East and Hornsby Bend West sites. It is anticipated that noise measurements will be performed semi-annually during the first year baseline period, over a one-week monitoring period. Monitoring operations will be planned so as to capture the existing baseline noise environment at each site early in the monitoring period. The second monitoring period will be timed to capture additional sources of ambient noise that may become established within the study area that were not present during the earlier monitoring study. URS will document all sources of noise during each monitoring period. URS will also document field observations of each monitoring site and include observations of new or other significant sources of noise unrelated to TXI operations, such as aircraft noise and roadway or other construction noise. Noise measurements will be performed at different times of the day, night, and week.

URS will perform all noise measurements using portable sound level meters and other equipment appropriate for the determination of existing outdoor noise levels and of sufficient accuracy to yield valid data (ANSI Type II or better). A series of short-term and long-term noise measurements will be performed to establish the existing, pre-mining noise levels within the study area. Sufficient short-term (15-minute to 1-hour) and long-term (24-hour) noise measurements will be conducted and monitoring results will be logged and electronically stored for quality control purposes. URS will install, maintain, calibrate, and protect all monitoring equipment, as appropriate. At a minimum, the monitoring equipment will measure equivalent (Leq) and/or day-night (Ldn) noise levels, maximum (Lmax) and minimum (Lmin) noise levels, as well as other noise metrics. For longer monitoring periods, noise metrics will be plotted over time.

At the conclusion of the baseline "pre-mining" phase, URS will document existing noise sources, noise propagation pathways, sensitive receptor locations, outdoor noise impact threshold or trigger levels, applicable local, state, and/or federal regulatory noise limits, and a summary of monitored baseline noise levels at each monitoring location in the Year 1 Annual Report.

**APPENDIX B**  
**CONSULTANT'S PROPOSAL**

(SEE CONTRACT FILE)

Fiscal Year 2011

Account Balance Inquiry

Account number . . . . : 1-4908-628.60-99  
Fund . . . . . : 001 GENERAL FUND  
Department . . . . . : 49 TNR (TRANS & NATRL RESRC)  
Division . . . . . : 08 ENVIRONMENTAL SERVICES  
Activity basic . . . . . : 62 INFRA-ENV SCVS (TRNS&RDS)  
Sub activity . . . . . : 8 ENVIRONMENTAL ANALYSIS  
Element . . . . . : 60 OTHER PURCHASED SERVICES  
Object . . . . . : 99 OTHER PURCHASED SERVICES

Original budget . . . . . : 140,342  
Revised budget . . . . . : 1,407,647 01/13/2011  
Actual expenditures - current . : 240,287.46  
Actual expenditures - ytd . . . : 974,260.12  
Unposted expenditures . . . . . : .00  
Encumbered amount . . . . . : 37,913.00  
Unposted encumbrances . . . . . : .00  
Pre-encumbrance amount . . . . . : 21,000.00  
Total expenditures & encumbrances: 1,273,460.58 90.5%  
Unencumbered balance . . . . . : 134,186.42 9.5

**F5=Encumbrances      F7=Project data      F8=Misc inquiry**  
**F10=Detail trans      F11=Acct activity list      F12=Cancel      F24=More keys**

Account Balance Inquiry

Account number . . . . : 1-4901-621.60-99  
Fund . . . . . : 001 GENERAL FUND  
Department . . . . . : 49 TNR (TRANS & NATRL RESRC)  
Division . . . . . : 01 COMMON MANAGEMNT FUNCTION  
Activity basic . . . . . : 62 INFRA-ENV SCVS (TRNS&RDS)  
Sub activity . . . . . : 1 TNR (TRANS & NATRL RESRC)  
Element . . . . . : 60 OTHER PURCHASED SERVICES  
Object . . . . . : 99 CONTRACTED SERVICES

Original budget . . . . . : 41,374  
Revised budget . . . . . : 26,267 06/24/2011  
Actual expenditures - current . . : 106.40  
Actual expenditures - ytd . . . : 3,751.60  
Unposted expenditures . . . . . : .00  
Encumbered amount . . . . . : 325.20  
Unposted encumbrances . . . . . : .00  
Pre-encumbrance amount . . . . . : 866.00  
Total expenditures & encumbrances: 5,049.20 19.2%  
Unencumbered balance . . . . . : 21,217.80 80.8

**F5=Encumbrances      F7=Project data      F8=Misc inquiry**  
**F10=Detail trans      F11=Acct activity list      F12=Cancel      F24=More keys**

Account Balance Inquiry

Account number . . . : 475-4998-760.60-99  
Fund . . . . . : 475 CONTRACTUAL CAPITAL PROJ  
Department . . . . . : 49 TNR (TRANS & NATRL RESRC)  
Division . . . . . : 98 PRIVTE AGNCY CNTRCT-PARKS  
Activity basic . . . . : 76 CAPITAL PROJECTS  
Sub activity . . . . . : 0 COMM & ECON DEV (PRK&REC)  
Element . . . . . : 60 OTHER PURCHASED SERVICES  
Object . . . . . : 99 CONTRACTED SERVICES

Project Req'd

Original budget . . . . . : 0  
Revised budget . . . . . : 65,000 11/01/2010  
Actual expenditures - current . : .00  
Actual expenditures - ytd . . . : 19,355.22  
Unposted expenditures . . . . . : .00  
Encumbered amount . . . . . : 6,644.78  
Unposted encumbrances . . . . . : .00  
Pre-encumbrance amount . . . . . : 39,000.00  
Total expenditures & encumbrances: 65,000.00 100.0%  
Unencumbered balance . . . . . : .00 0.0

F5=Encumbrances F7=Project data F8=Misc inquiry  
F10=Detail trans F11=Acct activity list F12=Cancel F24=More keys

