

SHOAL CREEK - ALLANDALE STORM DRAIN IMPROVMENTS CIP PROJECT  
HEALTH & SAFETY AND PROTECTION OF PUBLIC PROPERTY  
PURCHASING AFFIDAVIT

STATE OF TEXAS                }  
   }  
COUNTY OF TRAVIS         }

BEFORE ME, the undersigned authority, personally appeared Howard Lazarus, who being by me first duly sworn, upon oath depose and stated: "My name is Howard Lazarus. I am the Director of the City of Austin's Public Works Department. I am over eighteen (18) years of age and I have personal knowledge of the facts set forth below and am competent and authorized to make this affidavit.

The City of Austin's Public Works Department manages the City's Capital Improvements Program, (the "Program"). The City, through the Program, is currently providing essential transportation, drainage, and utility construction services for the citizens of the City of Austin. In doing so, the City is responsible for the health, safety and security of hundreds of thousands of citizens of the City. The City is also responsible for the protection of its constructed public infrastructure from the probability of unforeseen damage.

In 2011 and 2012, during the construction of the Shoal Creek - Allandale Storm Drain Improvements Project, CIP ID No. 5789.020 (the "Project"), City staff determined that additional water utility improvements would be required in the area of the Project after a significant portion of the work on the Project was near completion. This required the delay of construction on several sections of the Project while the water utility improvements were designed and added to the Project by Change Order. During that time, Texas Sterling Construction Company, the contractor on the Project, was required to repeatedly provide additional quantities of cold mix asphalt over excavated areas in order to provide a safe driving surface for local residents, emergency services vehicles, public utility vehicles, and members of the travelling public for an additional period of approximately six (6) months.

Further investigation and engineering analysis has led to the conclusion that the additional cost of the cold mix asphalt represents the reasonable costs of a purchase made for the purpose of preserving and protecting the public health and safety and that the failure to do so would have endangered the health and safety of the residents living along the Project and members of the travelling public. In addition, it has been determined that the provision of the additional quantities of cold mix asphalt was determined to be necessary to preserve and protect existing public infrastructure and the public improvements then under construction.

The City's contractor was directed to expeditiously perform the necessary construction by placing additional quantities of cold mix asphalt to abate the deteriorating surface

conditions along the "Project" in order to preserve or protect the public health and safety of the City's residents and to protect the public infrastructure. Until that action was taken, the City was faced with a continuing probability of health and safety related concerns and the probability of damage to public infrastructure. The situation described above required immediate action to complete the scope of work on the Project on a reasonable schedule, to relieve the health and safety necessity of the municipality, and to preserve public infrastructure. The Department of Public Works is satisfied that the quality of the completed work adequately provided for the health and safety of the public and protected the public infrastructure. The additional cold mix asphalt required for the Project could not be provided for an amount under the City Manager's purchasing authority pursuant to Article VII, Section 15 of the City Charter, and, accordingly, the present change order to the contract to add additional quantities of cold mix asphalt for the Project will be presented to City Council for approval.

As the affiant, I am familiar with state and local laws relating to competition and bidding requirements and realize that the willful violations of these laws can invoke criminal sanctions. I understand further that the Charter of the City of Austin does not exempt emergency or health and safety purchases or the protection of public infrastructure from the requirement of competition. However, I believe that the time required to package bid documents, advertise for contractors, award a contract, and execute a contract for the additional cold mix asphalt would have placed the municipality's residents or property, members of the travelling public, and public infrastructure in further danger and that my fiduciary responsibilities to the City of Austin required that the purchase of additional cold mix asphalt and related services be made as soon as reasonably possible, if not immediately. This procurement was necessary to protect or preserve the public health or safety of the municipality and the protect the public infrastructure in accordance with the provisions of Texas Local Government Code Section 252.022(a)(2) and (3). "Further Affiant sayeth not."



Howard Lazarus, Director  
City of Austin Public Works Department

STATE OF TEXAS            }  
                                     }  
COUNTY OF TRAVIS        }

BEFORE ME, the undersigned notary public, personally appeared Howard Lazarus, known to me personally or on the basis to legally sufficient identification to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity therein stated, and that each and every statement therein is within his knowledge and is true and correct.

Given under my hand and seal of office on the 23 day of October, 2013.

Marsha L. Schulz  
NOTARY PUBLIC, STATE OF TEXAS



\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

