

FM 812 LANDFILL CLOSURE PROJECT  
HEALTH & SAFETY REMEDIATION PROJECT  
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 City, through the Program, is currently providing essential public works construction management, including the management of environmental projects 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.

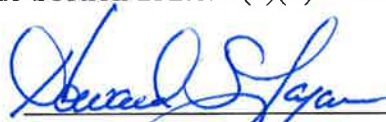
In March of 2014, during the course of managing the FM 812 Landfill Final Closure Project (the "Project"), it has become apparent that the Project has reached a critical stage of seasonal re-vegetation activities and, unless action is taken at the Project site to assure compliance with Project Specifications, Final Completion of the Project could be delayed for additional months. The Project is currently over three (3) years and five (5) months beyond the Substantial Completion date of September 23, 2010, and Ranger Excavation, the general contractor on the Project has still not achieved Final Completion.

In order to assure Project completion, the City will transition the general contractor off of the Project, address the general contractor's claims through the dispute resolution process, and contract with Matoka, Inc., of Austin, Texas, the landscape services subcontractor (the "Subcontractor") currently providing critical landscaping services for the Project for the continuation of those services.

The necessity of providing continuous landscaping services to prevent the environmental deterioration of the site and to assure Final Completion constitutes a public health and safety exception to the requirement of bidding. The general contractor will assign the landscaping services subcontract to the City and the City will directly contract with the Subcontractor to continue to perform the necessary landscaping services at Project in order to preserve or protect the public health and safety of the City's residents. Until the Project is completed, the City will be faced with a continuing probability of health and safety related concerns, including a failure to comply with applicable environmental regulations and permit requirements. The situation described above requires immediate action to ensure completion of the scope of work on the Project and to relieve the health and safety necessity of the citizens of the municipality.

The Department of Public Works is satisfied that the quality of the completed work will adequately provide for the health and safety of the public. It is presently contemplated that the Project may not be able to be completed for an amount under the City Manager's purchasing authority pursuant to Article VII, Section 15 of the City Charter, and, accordingly, the contract for the Project will be presented to City Council for ratification.

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 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, would place the municipality's residents or property at further risk of environmental deterioration and that my fiduciary responsibilities to the City of Austin required that the purchase of (item/service) be made as soon as reasonably possible, if not immediately. This procurement is necessary to protect or preserve the public health or safety of the municipality in accordance with the provisions of Texas Local Government Code Section 252.022(a)(2). "Further Affiant sayeth not."



Howard Lazarus, P.E., 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 12 day of March, 2014.



NOTARY PUBLIC, STATE OF TEXAS



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

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