



PARK, GOLF AND AQUATICS

Date: February 2, 2010

To: Delia Briones, County Clerk

From: Rosemary Neill

Re: Commissioners Court Agenda

Please place the following item on the Commissioners Court agenda for February 22, 2010:

Approve and authorize the County Judge to sign a Fixed Price Construction Contract Between Owner and Contractor with Caspian Construction Company for a construction project identified as Bid Number 09-089 for the re-roofing of the Ascarate Pool, the Fabens (O'Donnell) Pool and the Gallegos Park Pool.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Rosemary V. Neill", is written over a faint, light-colored signature line.

Rosemary V. Neill

Interim Director

Memorandum

To: County Judge Anthony Cobos, Commissioner Anna Perez,
Commissioner Veronica Escobar, Commissioner Willie Gandara and
Commissioner Daniel Haggerty

From: Rosemary Neill

Date: 2/18/2010

Re: Approval of a Fixed Price Construction Contract Between Owner and
Contractor

Action Item

Approve and authorize the County Judge to sign a Fixed Price Construction Contract Between Owner and Contractor with Caspian Construction Company for a construction project identified as Bid Number 09-089 for the re-roofing of the Ascarate Pool, the Fabens (O'Donnell) Pool and the Gallegos Park Pool.

Fiscal Impact

Funds are available in CP Capital 01.

Background Information

On December 18, 2006, Commissioners Court approved an allocation of \$1.5 million for improvements at Ascarate Park, the Golf Course and Ascarate, O'Donnell and Gallegos Pools. During budget hearings, staff outlined a series of infrastructure needs at these facilities.

One of the items identified was the re-roofing of the three swimming pools. These structures have the original roofs. The roofs are at the end of their useful life. Staff added this to the needs to ensure that the re-roofing occurred before the roofs failed and damaged the facilities.

On January 4, 2010 Commissioners Court awarded the bid to Caspian Construction Company as the lowest responsive bidder. Approval of the contract allows this work to proceed.

FIXED PRICE CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR

This FIXED PRICE CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR (the "Contract") is made and entered into by and between El Paso County, Texas, a political subdivision of the State of Texas (the "Owner") and Caspian Construction Company (the "Contractor"). This Contract is executed under seal, and shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as Bid Number 09-089 (the "Project") for the re-roofing of the Ascarate Pool, Fabens (O'Donnell) Pool, and the Gallegos Park Pool.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree:

1.

DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes the plans and specifications for the Project identified thereon as such, plus the following: El Paso County Bid # 09-089 and all addenda thereto and contractor's bid documents, all of which are hereby incorporated herein by reference and made a part hereof. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Paragraph 1 do not, and shall not, form any part of this Contract.

2.

REPRESENTATIONS OF THE CONTRACTOR

In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Owner:

(A) The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project;

(B) The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;

(C) The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

3.

INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

(A) This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents;

(B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;

(C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Contractor;

(D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation";

(F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

(G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals and shall give written notice to the Owner and the Owner Representative of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the Owner or the Owner Representative of any shop

drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Owner Representative to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made;

(H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large scale plans and small scale plans, the large scale plans shall govern;
- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.

4.

OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

The documents which make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner's prior written authorization.

5.

CONTRACTOR'S PERFORMANCE

The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- (A) Construction of the Project;
- (B) The furnishing of a performance and payment bond in the full amount of the contract and insurance;
- (C) The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project. **CONTRACTOR SHALL LAWFULLY DISPOSE OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS DONE BY CONTRACTOR OR ITS SUBCONTRACTOR IN FURTHERANCE OF THIS CONTRACT;**
- (D) The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon final completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

6.

TIME FOR CONTRACTOR'S PERFORMANCE

- (A) The Contractor shall commence the performance of this Contract on the date authorized by Owner/Owner's Representative in a written Notice to Proceed and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before: ten (10) days for the Fabens (O'Donnell) Pool; thereafter, ten (10) days for the Gallegos Park Pool; and thereafter twenty (20) days for the Ascarate Pool;
- (B) The Contractor shall pay the Owner the sum of Two hundred dollars and No/100 Dollars (\$200.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion for the Fabens (O'Donnell) Pool; thereafter the Gallegos Park Pool; and thereafter the Ascarate Pool. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall

promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages;

(C) The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Owner Representative, the Project is at a level of completion in strict compliance with this Contract such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion;

(D) All limitations of time set forth herein are material and are of the essence of this Contract.

7.

FIXED PRICE AND CONTRACT PAYMENTS

(A) The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed price of Thirty-eight thousand one hundred dollars and No/100 Dollars (38,100.00), to be allocated in the following manner: Eight thousand four hundred dollars and No/100 Dollars (\$8400.00) for the Fabens (O'Donnell) Pool; Eight thousand four hundred dollars and No/100 Dollars (\$8400.00) for the Gallegos Park Pool; and Twenty-one thousand three hundred dollars and No/100 Dollars for the Ascarate Pool. The price set forth in this Subparagraph 7(a) shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract;

(B) Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Owner Representative the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Owner Representative or the Owner requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Owner Representative and the Owner;

(C) The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph 7. On or before the fifteenth (15) day of each month after commencement of performance, but no more frequently than bi-weekly, the Contractor may submit a Payment Request for the period ending the last day of the previous two weeks. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Owner Representative, the

Owner, or both. Therein, the Contractor may request payment for ninety percent (90%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Each such Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Owner Representative shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by this Contract. The Owner Representative shall approve in writing the amount which, in the opinion of the Owner Representative, is properly owing to the Contractor. The Owner shall make payment to the Contractor within thirty (30) days following the Owner Representative's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Owner Representative less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Owner Representative's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Subparagraph 7(F) herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all subcontractors, materialmen, suppliers or others having lien rights, wherein said subcontractors, materialmen, suppliers or others having lien rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the Owner;

(D) When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights

in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future;

(E) Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;

(F) The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion of or the entire amount previously paid to the Contractor due to:

- (1) The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- (2) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- (3) The Contractor's rate of progress being such that, in the Owner's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed;
- (4) The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- (5) Claims made, or likely to be made, against the Owner or its property;
- (6) Loss caused by the Contractor;
- (7) The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 7(F), the Contractor shall promptly comply with such demand;

(G) If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days' written notice of its intent to cease work to the Owner. Any payment not made within thirty (30) days after the date due shall bear interest at the rate of one percent (1%) per month;

(H) When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Owner Representative in writing and shall furnish to the Owner Representative a listing of those matters yet to be finished. The Owner Representative will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Owner Representative will so notify the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. If the Owner Representative, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion for the Fabens (O'Donnell) Pool; thereafter the Gallegos Park Pool; and thereafter the Ascarate Pool, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price for each portion of the project as follows: Eight thousand four hundred dollars and No/100 Dollars (\$8400.00) for the Fabens (O'Donnell) Pool; thereafter Eight thousand four hundred dollars and No/100 Dollars (\$8400.00) for the Gallegos Park Pool; and thereafter Twenty-one thousand three hundred dollars and No/100 Dollars for the Ascarate Pool, less any amounts attributable to liquidated damages, together with one hundred percent (100%) of the reasonable costs as determined by the Owner for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims;

(I) When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Owner Representative thereof in writing. Thereupon, the Owner Representative will perform a final inspection of the Project. If the Owner Representative confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder, the Owner Representative will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Owner Representative is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment;

(J) If the Contractor fails to achieve final completion within twenty days of the date of Substantial Completion, the Contractor shall pay the Owner the sum of one hundred dollars and No/100 Dollars (\$100.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will

be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages;

(K) Prior to being entitled to receive final payment and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Owner Representative:

(1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;

(2) If required by the Owner, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;

(3) If applicable, consent(s) of surety to final payment;

(4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

(L) The Owner shall, subject to its rights set forth in Subparagraph 7(F) above, make final payment of all sums due the Contractor within ten (10) days of the Owner Representative's execution of a final Approval for Payment.

8.

INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

(A) The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey;

(B) The Owner shall obtain all required authorizations, approvals, easements, and the like excluding the building permit and other permits or fees required of the

Contractor by this Contract, or permits and fees customarily the responsibility of the Contractor;

9.

CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the work as required herein, the Owner may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

10.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

(A) The Contractor is again reminded of its continuing duties set forth in Subparagraph 3(G), which are by reference hereby incorporated in this Subparagraph 10(A). The Contractor shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Owner Representative and Owner, the Contractor shall be responsible for such work and pay the cost of correcting same;

(B) All work shall strictly conform to the requirements of this Contract;

(C) The work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor;

(D) The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty;

(E) The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all legal requirements applicable to the work. **CONTRACTOR SHALL LAWFULLY DISPOSE OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS DONE BY CONTRACTOR OR ITS SUBCONTRACTOR(S) IN FURTHERANCE OF THIS CONTRACT;**

(F) The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 10(f) as though such individuals had been listed above;

(G) The Contractor, within fifteen (15) days of commencing the work, shall provide to the Owner and the Owner Representative, and comply with, the Contractor's schedule for completing the work. Such schedule shall be in a form acceptable to the Owner. The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Owner Representative. Strict compliance with the requirements of this Subparagraph 10(G) shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract;

(H) The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Owner Representative at all regular business hours. Upon final completion of the work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner;

(I) Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless such shall have been approved in writing by the Owner Representative. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Owner Representative or the Owner shall not be evidence that work installed pursuant thereto conforms to the requirements of this Contract. The Owner and the Owner Representative shall have no duty to review partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the Owner or the Owner Representative;

(J) The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment;

(K) At all times relevant to this Contract, the Contractor shall permit the Owner and the Owner Representative to enter upon the Project site and to review or inspect the work without formality or other procedure.

11.

INDEMNITY

The Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Contractor's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, the unlawful disposal of construction materials, chemicals, or debris, or to loss or destruction of tangible property (other than the work itself), including loss of use resulting there from, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

12.

THE OWNER REPRESENTATIVE

The Owner Representative for this Project is Manny Lucero (the "Owner Representative"). In the event the Owner should find it necessary or convenient to replace the Owner Representative, the Owner shall retain a replacement Owner Representative and the role of the replacement Owner Representative shall be the same as the role of the Owner Representative. Unless otherwise directed by the Owner in writing, the Owner Representative will perform those duties and discharge those responsibilities allocated to the Owner Representative in this Contract. The duties, obligations and responsibilities of the Owner Representative shall include, but are not limited to, the following:

- (A) Unless otherwise directed by the Owner in writing, the Owner Representative shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract;
- (B) Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Owner Representative;
- (C) When requested by the Contractor in writing, the Owner Representative shall render interpretations necessary for the proper execution or progress of the work;
- (D) The Owner Representative shall draft proposed Change Orders;
- (E) The Owner Representative shall approve, or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor;
- (F) The Owner Representative shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of this Contract. If the Owner Representative deems it appropriate, the Owner Representative shall be authorized to call for extra inspection or testing of the work for compliance with requirements of this Contract;
- (G) The Owner Representative shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Owner Representative, are properly owing to the Contractor as provided in this Contract;
- (H) The Owner Representative shall, upon written request from the Contractor, perform those inspections required in Paragraph 7 hereinabove;
- (I) The Owner Representative shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this Contract consistent with the intent of this Contract;

(J) THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE OWNER REPRESENTATIVE. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE OWNER AND THE OWNER REPRESENTATIVE. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE OWNER REPRESENTATIVE TO THE OWNER.

13.

CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the Owner are subject to the following terms and conditions:

(A) All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Owner Representative. Such claim shall be received by the Owner and the Owner Representative no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

(B) The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor;

(C) In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Owner Representative written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 13(C) shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition;

(D) In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall strictly comply with the requirements of Subparagraph 13(A) above and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation;

(E) In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction;

(F) In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipatable, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the Owner upon the written claim of the Contractor to the Owner and the Owner Representative. A task is critical within the meaning of this Subparagraph 13(F) if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of Subparagraph 13(A) above. If the Contractor fails to make such claim as required in this Subparagraph 13(F), any claim for an extension of time shall be waived.

14.

SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Owner and the Owner Representative, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein below.

15.

CHANGE ORDERS

One or more changes to the work within the general scope of this Contract may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

(A) Change Order shall mean a written order to the Contractor executed by the Owner and the Owner Representative after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;

(B) Any change in the Contract Price resulting from a Change Order shall be determined as follows:

(1) By mutual agreement between the Owner and the Contractor as evidenced by (a) the change in the Contract Price being set forth in the Change Order, (b) such change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and (c) the Contractor's execution of the Change Order, or,

(2) If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct jobsite overhead and profit but shall not include home-office overhead or other indirect costs or components. Any such costs or savings shall be documented in the format and with such content and detail as the Owner or the Owner Representative requires.

(C) The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order;

(D) The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Owner, the Owner Representative, the Contractor's surety, or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

16.

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

(A) In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Owner Representative, such work shall be uncovered and displayed for the Owner's or Owner

Representative's inspection upon request, and shall be reworked at no cost in time or money to the Owner;

(B) If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph 16(A) above, it shall, if directed by the Owner or the Owner Representative be uncovered and displayed for the Owner's or Owner Representative's inspection. If the uncovered work conforms strictly to this Contract, the costs incurred by the Contractor to uncover and subsequently, replace such work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor;

(C) The Contractor shall, at no cost in time or money to the Owner, correct work rejected by the Owner or by the Owner Representative as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof;

(D) In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following final completion upon written direction from the Owner.

(E) The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

17.

TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Owner Representative. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 19(A) hereunder.

18.

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

(A) The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to ten (10) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;

(B) In the event the Owner directs a suspension of performance under this Paragraph 18, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (1) Demobilization and remobilization, including such costs paid to subcontractors;
- (2) Preserving and protecting work in place;
- (3) Storage of materials or equipment purchased for the Project, including insurance thereon;
- (4) Performing in a later, or during a longer, time frame than that contemplated by this Contract.

19.

TERMINATION BY THE OWNER

The Owner may terminate this Contract in accordance with the following terms and conditions:

(A) The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

- (1) The Contractor shall submit a termination claim to the Owner and the Owner Representative specifying the amounts due because of the termination

for convenience together with costs, pricing or other data required by the Owner or the Owner Representative. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;

(2) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;

(3) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(a) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 19(A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 19(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

(B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole

the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph 19(B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 19(A) and the provisions of Subparagraph 19(A) shall apply.

20.

INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements of Exhibit "A" attached hereto and incorporated herein by reference.

21.

SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably acceptable to the Owner.

22.

PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Owner Representative for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.

23.

APPLICABLE LAW

The law applicable to this Contract is hereby agreed to be the law of the State of Texas and venue shall lie in El Paso County.

24.

SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

25.

PREVAILING WAGE RATES AND APPRENTICESHIP PROGRAM

(A) The Contractor is aware that and hereby agrees that not less than the prevailing wage rates included in the bid specifications, which were adopted by the El Paso County Commissioners Court on May 12, 2008 for Highway/Heavy Construction and for Building Construction Trades, shall be paid to all workers on the Project. A copy of the prevailing wage rates is attached hereto and by this reference is incorporated herein as part of this contract.

(B) Contractor agrees to comply with Tex. Gov't Code Sections 2258.001 through 2258.058 and acknowledges that it understands that it will pay to the Owner the sum of \$60.00 per day or part of a day, per worker, that a worker is paid less than said prevailing wage rates set forth in this contract.

(C) The Contractor agrees to keep records showing the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the public work and the actual per diem wages paid to each worker. The Contractor further agrees that such records shall be open at all reasonable hours to inspection by the County through its officers and agents.

(D) The Contractor shall post the prevailing wage rate schedules made part of this contract at each work site in a prominent location readily accessible to the workers through the duration of the project. In addition, the Contractor shall post a notice to be provided by the County Director of Public Works regarding Prevailing Wage Rates and

the County Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rate schedules.

(E) Upon a determination by the County that there is good cause to believe that Contractor or a subcontractor has violated Chapter 2258 of the Texas Government Code, the County shall withhold any amount due under the contract, up to and including the entire contract price, which the Commissioners Court or its agent, in the exercise of reasonable discretion, determines is sufficient to 1) cover the costs to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the Contractor or subcontractor and the amount the worker would have received at the prevailing wage rate and 2) cover the costs of penalties under Section 2258.023 and 3) to ensure compliance with Chapter 2258 for the duration of the project.

(F) At the time the Contractor submits its applications for progress payments to the project Owner Representative, the Contractor shall provide a certified payroll for all employees during the period of that pay request.

(G) No worker shall be discharged by the Contractor or Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint or instituted or caused to be instituted any legal or equitable proceeding or has testified or is about to testify in any such proceeding under or relating to the prevailing wage rate laws, the apprenticeship program or the provisions of this contract.

(H) The Contractor and subcontractors shall allow expeditious jobsite entry by the County Director of Public Works and his/her agents and representatives displaying and presenting proper identification credentials to the jobsite superintendent or his/her representative. While on the jobsite the County Director of Public Works and his/her agents and representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. The Contractor and subcontractors shall allow project employees to be interviewed at random for a reasonable duration by the County Director of Public Works and his/her agents and representatives to facilitate compliance determinations regarding the prevailing wage rate payment provisions and apprenticeship program provisions of this contract.

(I) In the event a particular work element of the project calls for a certain employee classification and skill that is not listed in the prevailing wage rate schedules in the contract, the Contractor shall notify the Director of Public Works who shall investigate the matter and make a recommendation to the Commissioners Court to make a special wage rate determination as required.

(J) In accordance with the Order of the Commissioners Court of El Paso County Regarding Apprenticeship Program Requirements adopted on May 17, 1999, the Contractor and all subcontractors must comply with the following:

1. Must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are “apprenticeable occupations” as defined by DOL regulations;
2. Must hire registered apprentices enrolled in a DOL certified apprenticeship program. **No helpers shall be permitted;**
3. **May not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;**
4. Must pay wage rates and benefits package for apprentices as determined by the apprenticeship program/DOL;
5. Must comply with DOL requirements for the ratio of apprentices to journeymen;
6. **Must hire apprentices in all job classifications utilized on the project and which are “apprenticeable occupations” as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.**

(K) The Contractor shall post the prevailing wage rate schedules made part of this contract at each work site in a prominent location readily accessible to the workers through the duration of the project. In addition, the Contractor shall post a notice to be provided by the County Director of Public Works regarding Prevailing Wage Rates and the County Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rate schedules.

(L) The Contractor shall provide the names of all apprentices on the project, verification of their status as registered apprentices, and documentation as to their proper wage rates and journeyman to apprentice ratios as determined by the apprenticeship program.

(M) The County reserves the right to terminate this Contract for cause if the Contractor and/or subcontractors shall breach any of these provisions regarding the payment of prevailing wages or the apprenticeship program.

(N) **The Contractor shall cause these and any other appropriate prevailing wage rate and apprenticeship program provisions to be inserted in all subcontracts relative to the work to bind the subcontractors to the same prevailing wage rate and apprenticeship program provisions as are applicable to the Contractor.**

IN WITNESS WHEREOF THE PARTIES EXECUTE THIS CONTRACT:

OWNER
THE COUNTY OF EL PASO

CONTRACTOR
Caspian Construction Company

By _____

By _____

County Judge Anthony Cobos
Date _____

Name Maleknasef Akhtari
Title Owner
Date _____
Signor must be authorized to bind
corporation.

ATTEST:

County Clerk

EXHIBIT A

INSURANCE REQUIREMENTS

Contractor agrees that, at its own cost and expense, it shall procure and continue in force throughout the term of this Agreement, for the benefit of the County of El Paso, its officers, agents, and employees, the following listed insurance in the designated amounts. All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. All policies shall name the County of El Paso, its officers, agents, and employees as additional insureds. Contractor shall furnish to the El Paso County Risk Manager a certificate from the insurance carrier showing such insurance to be in full force and effect during the term of this Agreement. Said certification shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to the El Paso County Risk Manager thirty (30) days in advance of the effective date thereof.

1. Worker's compensation Including Occupational Disease, and Employer's Liability Insurance: Procure, and maintain during the life of the contract, Statutory Worker's Compensation Insurance and Occupation Disease Disability Insurance in strict accordance with requirements of the most current and applicable State Workmen's Compensation Insurance Laws for all employees engaged in Work under the contract, and in case any Work is sublet, require each subcontractor to provide Worker's Compensation and Occupational Disease Disability Insurance for the latter's employees engaged in such Work. In case any class of employees engaged in hazardous Work under his Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate Employer's Liability Insurance for the protection of his employees not otherwise protected.

2. Commercial and comprehensive General Liability, including Products Liability and Completed Operations: (Note "Indemnity" clause hereinafter.) Procure, and maintain during the life of the Contract, full comprehensive General Liability and Property Damage Insurance coverage. This coverage shall provide protection from claims for damages for personal injury and bodily injury including in part sickness, disease, and from claims for damages to property (including "Broad Form"), which may arise directly or indirectly out of, or in connection with, the performance of the Work under the Contract by the Contractor or by any of his subcontractors or by anyone directly or indirectly employed by

either of them or under the control of either of them, and the minimum amount of such insurance shall be as follows:

(a) Bodily Damage and Public Liability Insurance is an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for damages arising out personal injury and bodily injury including in part: sickness, disease or death of one person and subject to the same limit for each person and in an amount not less than Two Million Dollars (\$2,000,000.00) in any one occurrence; and Property Damage Insurance (Broad Form) in an amount not less than Five Hundred Thousand (\$500,000.00) Dollars for damages arising out of injury to or destruction of property of others in any one occurrence with an aggregate limit in the same amount.

(b) The Property Damage portion of this coverage shall include such hazardous operations as explosion, collapse and underground exposure coverage. In addition, completed Operations Insurance coverage shall be maintained after completion and acceptance of the project for the full guarantee and maintenance period.

(c) Automobile Liability and Property Damage Insurance: Procure, and maintain during the life of the Contract, Comprehensive Automobile Liability and Property Damage Insurance coverage on all vehicles used in connection with the Contract, whether owned, non-owned, or hired. The liability limits shall be not less than Five Hundred Thousand Dollars (\$500,000.00) for injury or death of each person and in an amount not less than One Million Dollars (\$1,00,000.00) in any one occurrence; and Property Damage limits of not less than Five Hundred Thousand Dollars (\$500,000.00) in any on occurrence.

(d) Owner's Protective Liability Policy: Provide the Owner with an Owner's Protective Liability Policy naming the Worker as the named insured, with the Engineer, and each of their officers, agents, and employees as additionally insured under that policy, said policy to protect said parties from claims which may arise from operations under the Contract. This coverage shall be the same company which provides the Contractor's liability insurance coverage, and in the same minimum amounts.

(e) Contractual Liability Coverage: Each and ever policy for liability insurance carried by each Contractor and Subcontractor will include a "Broad Form Contractual Liability Coverage" endorsement sufficiently broad to insure the provision titled "indemnity" hereinafter set forth.

(f) Indemnity: To the extent permissible by law, the Contractor shall protect, defend, indemnify and save harmless the Owner, its officers, agents, and employees from and against suits, actions, claims, losses, liability or damage of any character and from and against costs and expenses, including in part, attorney fees, incidental to the defense of such suits, actions, claims losses,

damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including in part the loss of use resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Contractor or his employees, agents, subcontractors, or suppliers, or anyone else under the Contractor's direction and control, (regardless if caused in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any Work or services called for by the Contract, or form conditions created by the performance or no-performance of said Work or services.

(g) Builder's Risk "All-Risk" Insurance: In addition to such Fire and Extended Insurance coverage which the Contractor elects to carry for his own protection, he shall procure and shall maintain for the life of the Contract, Builder's Risk "All-Risk" Completed Value insurance coverage, including, but not limited to, Fire and standard Extended Insurance coverage, Vandalism and Malicious Mischief, upon the full insurable value of all portions of the Work which is the subject of the Contract and subject to a loss for which such Builder's Risk "All-Risk" insurance coverage gives protection and shall include completed Work and Work in progress. Value of this policy shall be fixed to the total bid price on the Bid Form. This coverage shall be with an insurance company or companies acceptable to the Owner.

(h) Boiler and/or Machinery Insurance: Boiler and/or Machinery Insurance, where appropriate and necessary, shall be procured and maintained by the Contractor until the Work has been completed and accepted by the Owner.

From: Art Provenghi
Sent: Friday, February 12, 2010 12:21 PM
To: Rosemary Neill
Subject: KK-10-056-Contract Review Form-Family and Community Scvs.-Fixed Price Contract for Construction-Caspian Construction Co.

Attachments: k10056 Construction Contract-Caspian.doc

EL PASO COUNTY LEGAL REVIEW FORM

KK-10-056

Contract Description: Family and Community Services-Fixed Price Contract Between Owner and Contractor- Caspian Construction Company

COUNTY ATTORNEY ACTION**

****Requested Amendments/Clarifications:** Please list any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

Approved as to Form as Submitted

Approved as to Form with Amendments/Modifications/Reservations Noted Below*

Not Approved

*1)

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

Art Provenghi

Assistant County Attorney

Date: February 12, 2010