

FILED FOR RECORD: 1-31 19 84 at 4:00 o'clock P M
DULY RECORDED: 2-2 19 84 at 9:00 o'clock A M
INSTRUMENT NO. _____ GRACE BOSTICK, TYLER CO. CLK.
BY: Jean Phillips Deputy
JEAN PHILLIPS

TYLER COUNTY COMMISSIONER'S COURT
SPECIAL MEETING
JANUARY 23, 1984----9:00 A. M.

VOL 008 PAGE 903

A Special Meeting of the Commissioner's Court met on Monday, January 23, 1984, at 9:00 A. M. All members being present. The meeting was opened with prayer by Commissioner Pct. #4 James R. Jordan.

A motion was made by Commissioner Riley and seconded by Commissioner Lowe to accept the resignation of County Attorney Joe R. Smith, effective February 1, 1984, with a letter of appreciation to be sent to Mr. Smith from Commissioner's Court. All voted yes and none no. See Attached.

A motion was made by Commissioner Riley and seconded by Commissioner Mahan to table until a later date any discussion on Employees' Insurance. All voted yes and none no.

A motion was made by Commissioner Riley and seconded by Commissioner Mahan to advertise for bids on old office equipment, now stored, with equipment to be on display in the Commissioner's Courtroom, From February 15, 1984 until February 17, 1984, at 10:00 A. M. Bids received will be opened on Friday, February 17, 1984 at 10:00 A. M. All voted yes and none no.

A motion was made by Commissioner Riley and seconded by Commissioner Mahan to accept an administration proposal from Deep East Texas Council of Governments, as submitted by DETCOG representative Randy Blanks. This is to cover administrative services in connection with the Block Grant received to improve public facilities in the Warren, Texas Community by paving 4.5 to 5 miles of streets and replacing an inadequate bridge. All voted yes and none no. See Attached.

A motion was made by Commissioner Riley and seconded by Commissioner Mahan to consider an audit for the Block Grant, pending approval from Mr. Kennedy, of Kennedy and Co., outside auditor for Tyler County. All voted yes and none no.

Jerry Clark, representative from Everett Griffith, Jr. and Associates, Inc., Lufkin, Texas, met with Commissioners Court to discuss the engineering proposal on the Block Grant. After a question and answer session, a motion was made by Commissioner Riley and seconded by Commissioner Lowe to consider the proposal, pending approval of DETCOG representative Randy Blanks. All voted yes and none no. At the same time, a motion was made by Commissioner Riley and seconded by Commissioner Jordan to accept the proposal for a sub-surface investigation on roads to be repaired by funds from the Block Grant, from East Texas Testing Laboratory, Inc., Lufkin, Texas, and to give Judge Allen Sturrock permission to sign the agreement. All voted yes and none no. See Attached. A motion was made at this time by Commissioner Riley and seconded by Commissioner Jordan to approve the engineering proposal from Everett Griffith, Jr. and Associates, Inc., Lufkin, Texas, concerning the Block Grant, since Mr. Randy Blanks had studied the proposal and given his approval. All voted yes and none no. See Attached.

RECESSED:

IN SESSION:

A motion was made by Commissioner Riley and seconded by Commissioner Mahan to table the decision of appointing a new County Attorney to replace Joe R. Smith, who resigned this date, until Monday, January 30, 1984, at 10:00 A.M. in order to give prospects a chance to appear before the Court. All voted yes and none no.

A motion was made by Commissioner Lowe and seconded by Commissioner Mahan to table any decisions on accepting opened bids received for a new dozer for the Tyler County Solid Waste site, until Monday, January 30, 1984, at 10:00 A. M. Bids received are listed below:

George P. Bane, Inc., Tyler, Texas-----\$85,495.00
 Less Trade-in ----- 26,258.00
 Total Bid price----- 59,237.00

Mustang Tractor & Equipment Co., Lufkin, Texas, -\$95,223.00
 Less Trade-in----- 52,036.00
 Total Bid price----- 43,187.00

All voted yes and none no.

A motion was made by Commissioner Riley and seconded by Commissioner Mahan to table any decisions on accepting opened bids received for two (2) new trailers for Pct. #1 and Pct. #4, until Monday, January 30, 1984, at 10:00 A. M. Bids received are listed below:

Birdwell's Welding & Machine Shop, Woodville, Texas
 (Each trailer, \$14,095.00) Total Bid-----\$28,190.00

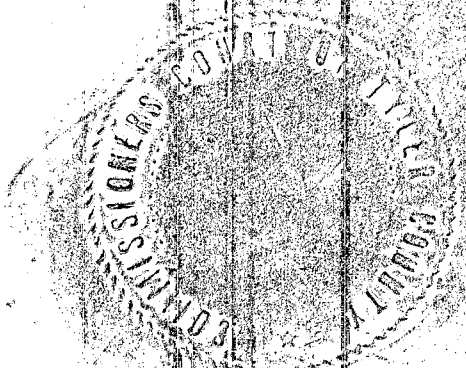
George P. Bane, Inc., Tyler, Texas
 (Each trailer, \$10,459.00) Total Bid----- 20,918.00

Mustang Tractor & Equipment Co., Lufkin, Texas
 (Each trailer, #10,242.50) Total Bid----- 20,485.00

All voted yes and none no.

There being no further business, the meeting adjourned.

SIGNED: Allen Sturrock Allen Sturrock, County Judge
Maxie Riley Maxie Riley, Comm. Pct. #1
H. K. Lowe H. K. Lowe, Comm. Pct. #2
Jerry Mahan Jerry Mahan, Comm. Pct. #3
James R. Jordan James R. Jordan, Comm. Pct. #4
 ATTEST: Grace Bostick Grace Bostick, County Clerk



283-3645

JOE R. SMITH
COUNTY ATTORNEY
TYLER COUNTY
WOODVILLE, TEXAS 75979

201 COURTHOUSE

January 13, 1984

VOL 008 PAGE 905

Commissioner's Court of Tyler County, Texas

To The Honorable Judge of County Court, and
Tyler County Commissioners and Citizens
of Tyler County, Texas:

I hereby submit this written resignation effective February
1, 1984.

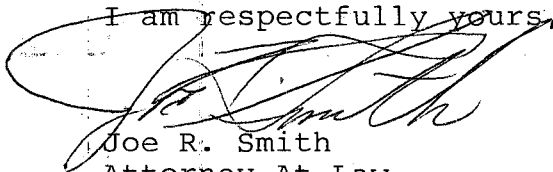
It has been my pleasure to have served as your County Attorney
for the past three years. I would like to especially thank
my staff, Betty Ray and Teresa Wailes, this Honorable Court and
members of the Tyler County Commissioners Court. Without their
assistance and aid the programs and the disposal and the current-
ness of our docket in County Court would have been impossible.

I would like to thank the Attorney's for their assistance and
support to me and this office over the past three years.

I have enjoyed serving the public and working as the County's
advisor to the other offices of this County.

A special thanks goes to the Tyler County Probation Department
for their support and assistance.

I am respectfully yours,



Joe R. Smith
Attorney At Law
314 South Magnolia
Woodville, Texas 75979

JRS/br

INTER GOVERNMENTAL AGREEMENT FOR ADMINISTRATIVE SERVICES

MADE AND ENTERED into this _____ day of _____, 1984 by and between the Tyler County Commissioners Court, hereinafter called the "COUNTY" and the Deep East Texas Council of Governments located at 272 East Lamar Street, 2nd Floor, P.O. Drawer 1170, Jasper, Texas hereinafter called "DETCOG."

WHEREAS, the COUNTY intends to improve public facilities in the Warren Community through paving 4.5 to 5 miles of streets and replacing an inadequate bridge through its Texas Community Development Program, said described improvements being hereinafter called the "Project."

I.
EMPLOYMENT OF DETCOG

The COUNTY agrees to employ DETCOG and DETCOG agrees to perform the administrative services in connection with the PROJECT as stated in the following sections, and for having rendered such services, the COUNTY agrees to pay DETCOG compensation as provided in the following sections.

II.
CHARACTER AND EXTENT OF SERVICES

DETCOG shall render the following professional services during the various phases in the development of the PROJECT:

A. ADMINISTRATIVE SERVICES

1. DETCOG will refine data submitted in the application and acquire additional data as may be required for bid estimates.
2. Various census data, including housing, population, income levels, Environmental Assessment and public notices of the Project will be prepared by DETCOG for submission to the Texas Community Development Program as required by regulation.
3. DETCOG shall furnish professional personnel to guide, assist, establish project files, and make recommendations for effective grant management throughout the term of the PROJECT, consistent with state and federal regulations. This shall include, but not limited to, required PROJECT reports, document retention, PROJECT monitoring, public meetings, Pre-construction Conferences, Texas Community Development Program Meetings and grant close-out procedures.

B. BIDDING OR NEGOTIATING PHASES:

1. DETCOG will assist the COUNTY and their Engineers in advertisements of the PROJECT for biddings.
2. DETCOG will attend bid openings.
3. DETCOG will prepare bid tabulation and analyze bids.
4. DETCOG will attend pre-construction conference with engineer and contractor.

C. CONSTRUCTION PHASES:

1. DETCOG will make periodic visits to the construction sites. These periodic visits are distinguished from the continuous services of a Resident Project Representative and are made by DETCOG to observe the progress and quality of work as expected and to verify that all work is proceeding in accordance with contract documents.

2. DETCOG final inspection and report on the completed construction contract phases of the PROJECT.
3. DETCOG will appear before regulatory agencies.

VOL 008 PAGE 907

III.
NOTICE TO PROCEED

No professional services of any nature shall be undertaken by DETCOG under this Agreement until a written "Notice to Proceed" is issued by the COUNTY.

IV.
PERIOD OF SERVICE

This Agreement shall be effective upon execution of the COUNTY and DETCOG, and shall remain in force until terminated under the provisions hereinafter provided. It is anticipated that design and construction of the PROJECT shall be completed within twelve (12) months after "Notice to Proceed" is issued.

Upon written request of DETCOG to the COUNTY, time extensions will be allowed to the extent of any delays caused by factors beyond the control of DETCOG or by the COUNTY or other agencies with whom the work must be coordinated.

V.
COORDINATION WITH THE OWNER

DETCOG shall hold periodic conferences with the COUNTY Commissioners Court, or the COUNTY Representatives, to the end that the PROJECT, as perfected, shall have full benefit of the COUNTY's experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. To implement this coordination, the COUNTY shall make available to DETCOG for use in, planning the PROJECT, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and the PROJECT.

VI.
SUB-CONTRACT

DETCOG shall reserve the right to sub-contract any portion of its work, as called for in this agreement, that DETCOG might deem expedient or in the best interest of the PROJECT.

VII.
DETCOG'S COMPENSATION

For and in consideration of the services to be rendered by DETCOG, the COUNTY shall pay and DETCOG shall receive the compensation hereinafter set forth for the services described in Section II. All remittances by the COUNTY of such compensation shall be either mailed or delivered to DETCOG's office in Jasper, Jasper County, Texas.

DETCOG will invoice the COUNTY monthly on actual cost basis of services completed to date.

The COUNTY agrees to promptly pay DETCOG the full amount of each such invoice upon receipt. Final payment for such services shall be due upon completion of those services.

The basis of compensation for the various services to be performed by DETCOG shall be on a cost plus fixed fee which shall not exceed the following amounts.

Administrative Services	\$13,000
TOTAL	\$13,000

VIII.
ADDRESS OF NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement to be mailed, delivered, or telephoned to DETCOG shall be to the following address or telephone number:

Deep East Texas Council of Governments
Regional Services Department
P.O. Drawer 1170
272 East Lamar Street
2nd Floor
Jasper, Texas 75951
Phone: 409/384-5704

008 PAGE 908

All notices and communication under this Agreement to be mailed, delivered, or telephoned to the COUNTY shall be to the following address or telephone number:

Judge Allen Sturrock
Tyler County
100 Courthouse
Woodville, Texas 75979
Phone: 409/283-2141

IX. TERMINATION

Either party may terminate this agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) or intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

The COUNTY may terminate this agreement, in whole or in part, in writing, for its convenience, if the termination is for a good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new step) and DETCOG is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with terminating party before termination.

If the COUNTY terminates for default, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work and (2) any payment due to DETCOG at the time of termination may be adjusted to the extent of any additional costs the COUNTY incurs because of DETCOG's default. If DETCOG terminates for default or if the COUNTY terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to DETCOG for services rendered and expenses incurred before the termination, in addition to termination settlement costs DETCOG reasonably incurs relating to commitments which had become firm before the termination.

Upon receipt of a termination action under the 1st and 2nd paragraphs of this section (IX-Termination) DETCOG shall (1) promptly discontinue all services affected (unless the notice directs otherwise) and (2) deliver or otherwise make available to the COUNTY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as DETCOG may have accumulated in performing this agreement whether completed or in process.

Upon termination under the 1st and 2nd paragraphs of this section (IX-Termination), the COUNTY may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the COUNTY takes over for completion will be completed at the COUNTY's risk, and the COUNTY will hold harmless DETCOG from all claims and damages arising out of improper use of DETCOG's work.

If, after termination for failure of DETCOG to fulfill contractual obligations, it is determined that DETCOG had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment of the price provided for in this agreement shall be made as the 3rd paragraph in this section (IX-Termination) of this clause provides.

X.
CAPTION

COB 909

Each section under the contractual undertakings has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any section or in any way determine its interpretation or applications.

XI.
SUCCESSORS AND ASSIGNMENTS

The COUNTY and DETCOG each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor DETCOG shall assign, sublet, or transfer his interest in this Agreement without written consent of the other. Nothing herein shall be construed to as creating any personal liability on the part of any officer or agent of any public body which may be a party thereto.

EXECUTED in two counterparts, each of which is an original, on behalf of DETCOG by the Executive Director shown below, and on behalf of the COUNTY by their authorized representative this 23rd day of January 1984.

ACCEPTED:

PROPOSED:

TYLER COUNTY

DEEP EAST TEXAS COUNCIL OF GOVERNMENTS

Allen Sturrock

Ray Hill

Allen Sturrock
County Judge

Ray Hill
Executive Director

DATE: 1-23-84

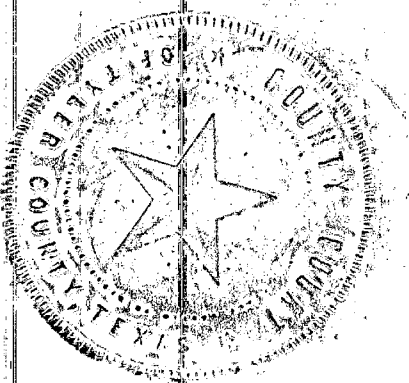
ATTEST:

Grace Bostick by Dorcas Longham
Chief Deputy *Randy Blanks*

Grace Bostick
County Clerk

Randy Blanks
Regional Planner

DATE: January 23, 1984



408 NORTH THIRD STREET

ENGINEERING



SURVEYING

EVERETT GRIFFITH, JR. & ASSOCIATES, INC.

PHONE 634-5528

P.O. BOX 1746
LUFKIN, TEXAS 75901

January 18, 1984

VOL 008 PAGE 910

Honorable Allen Sturrock,
Tyler County Judge
100 Courthouse
Woodville, Texas 75979

RE: Tyler County's Community Development Program Grant

Honorable Allen Sturrock:

Professional effort as planned and scheduled by Everett Griffith, Jr. and Associates, Inc. is outlined by the personnel involved, tasks to be performed (and responsibilities taken), as well as monetary values allocated. (Item 6. from your letter on Request for Proposal - Professional effort).

<u>EGA Individual</u>	<u>Task</u>	<u>\$ Compensation</u>
James W. Griffith	Scope Determination Agency Coordination Management	800
C.W. Quisenberry	Project Development Scheduling Internal Project Control Management/Engineering	1,750
Jerry M. Clark	Client Contact Engineering Design Job Cost Estimate Plan/Specification Review	4,350
Cecil Booth	Existing Facilities Survey Engineering Design/Study Plan/Specifications Revisions Site Development Planning	8,350
Lynn Brown	Coordinate Base Investigation, Interpret Results	1,000

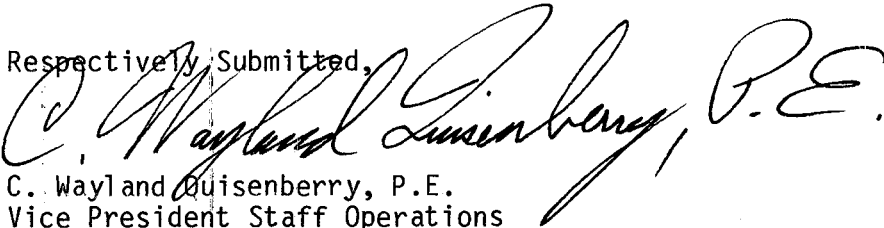
<u>EGA Individual</u>	<u>Task</u>	<u>\$ Compensation</u>
Elmo Taylor	Design Drafting Drafting Revisions Review CADD Supervisions	1,250
Waynn Bentley	Drafting CADD Operations	5,250
Mike Walker	Calculations-Analytical Data	500
CADD Computer	Computer Aided Design	<u>1,750</u>
	TOTAL ENGINEERING	\$25,000

Other - Surveying as requested by Owner.

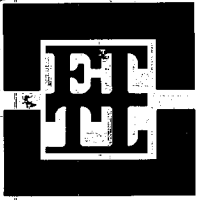
Rick Freeman	Supervise Surveying for Drainage Easements
Mike Parker	Records Research, Fieldnote Description for Easements
Survey Crew	Locate and Stake Property Lines and Easements for Description and Construction

ESTIMATED FOR SURVEYING \$ 1,200

Respectively Submitted,


C. Wayland Quisenberry, P.E.
Vice President Staff Operations

CWQ/dls



East Texas Testing Laboratory Inc.

GEOTECHNICAL • MATERIALS • ENVIRONMENTAL

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Analytical Lab (214) 595-6402

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(214) 758-0402

LUFKIN
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Lufkin, Texas 75901
(713) 634-5777



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A.I.C.H.E.
N.S.P.E.
A.I.C.E.
A.S.F.E.
A.C.S.
A.C.I.

VOL 008 PAGE 912

Lufkin, Texas
January 20, 1984

Tyler County, Texas
c/o Everett Griffith, Jr., & Associates, Inc.
P. O. Box 1746
Lufkin, Texas 75901

Attn: Mr. Jerry Clark

Re: Road Paving
Vicinity of Warren, Texas
Tyler County, Texas

Gentlemen:

In accordance with your request, we are pleased to submit our proposal for a subsurface investigation on eight roads in the vicinity of Warren, Texas. It is our understanding that the total length of roads is five miles.

FIELD OPERATIONS

Based upon our conversation, the field operations for this project will consist of drilling eight (8) borings to a total depth of three feet each and obtaining nineteen (19) samples for gradations of the existing base material along with thickness.

LABORATORY TESTING

For this project the following tests are anticipated:

1. Atterberg liquid and plastic limits.
2. Percentage of fines passing the No. 200 sieve.
3. Natural Moisture Content.
4. Gradations.

These tests are conducted to: (1) classify the soil strata according to a widely used engineering classification system; and, (2) to determine quality of existing base material.

Tyler County, Texas
c/o Everett Griffith, Jr., & Associates
PAGE TWO

VOE 008 PAGE 913

COST ESTIMATE

If this exploration and evaluation program proceeds as planned, i.e., no unforeseen circumstances develop, the cost for these services should not exceed \$1,700.00. We will notify you immediately if any unusual or unanticipated conditions and/or circumstances are encountered which would indicate the potential for a cost in excess of the noted value.

We appreciate the opportunity to submit this proposal, and we look forward to serving you. If this proposal is acceptable, please sign below and return one copy to our office. We are available to answer any questions that you may have.

Very truly yours,

EAST TEXAS TESTING LABORATORY, INC.



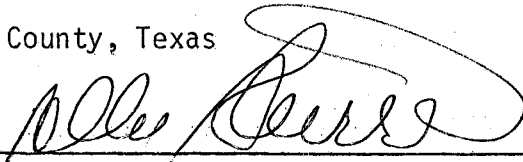
William V. Jacobs, P. E.
Vice President

WVJ/dw

ABOVE PROPOSAL AGREEMENT

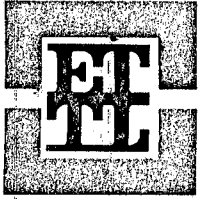
ACCEPTED BY

OWNER: Tyler County, Texas



1-23-84

Date:



East Texas Testing Laboratory Inc.

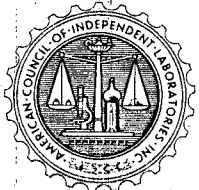
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A.C.I.

VOL 008 PAGE 914

Lufkin, Texas
January 20, 1984

Tyler County, Texas
c/o Everett Griffith, Jr., & Associates, Inc.
P. O. Box 1746
Lufkin, Texas 75901

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Based upon our conversation, the field operations for this project will consist of drilling eight (8) borings to a total depth of three feet each and obtaining nineteen (19) samples for gradations of the existing base material along with thickness.

LABORATORY TESTING

For this project the following tests are anticipated:

1. Atterberg liquid and plastic limits.
2. Percentage of fines passing the No. 200 sieve.
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These tests are conducted to: (1) classify the soil strata according to a widely used engineering classification system; and, (2) to determine quality of existing base material.

Tyler County, Texas
c/o Everett Griffith, Jr., & Associates
PAGE TWO

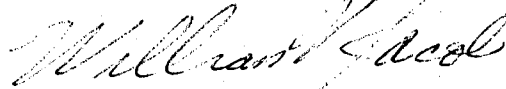
VOL 008 PAGE 915

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Very truly yours,
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William V. Jacobs, P. E.
Vice President

WVJ/dw

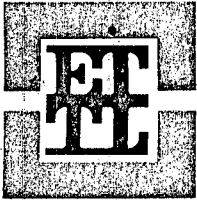
ABOVE PROPOSAL AGREEMENT
ACCEPTED BY

OWNER: Tyler County, Texas



1-23-84

Date:



East Texas Testing Laboratory Inc.

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VOL. 008 PAGE 916

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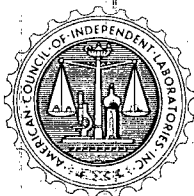
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2012 North Timberland
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(713) 634-5777

Lufkin, Texas
January 20, 1984

Tyler County, Texas
c/o Everett Griffith, Jr., & Associates, Inc.
P. O. Box 1746
Lufkin, Texas 75901

Attn: Mr. Jerry Clark

Re: Road Paving
Vicinity of Warren, Texas
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Tyler County, Texas
c/o Everett Griffith, Jr., & Associates
PAGE TWO

VOL 008 PAGE 917

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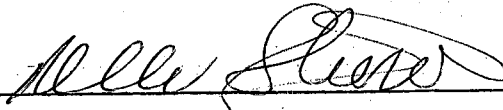


William V. Jacobs, P. E.
Vice President

WVJ/dw

ABOVE PROPOSAL AGREEMENT
ACCEPTED BY

OWNER: Tyler County, Texas



1-28-84

Date:

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

VOL 008 PAGE 918

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

and by

AMERICAN CONSULTING ENGINEERS COUNCIL

and by

AMERICAN SOCIETY OF CIVIL ENGINEERS

TABLE OF CONTENTS

	<i>Page No.</i>
IDENTIFICATION OF THE PARTIES	1
DESCRIPTION OF THE PROJECT	1
SECTION 1—BASIC SERVICES OF ENGINEER	1
1.1. General	1
1.2. Study and Report Phase	1
1.3. Preliminary Design Phase	2
1.4. Final Design Phase	2
1.5. Bidding or Negotiating Phase	2
1.6. Construction Phase	3
SECTION 2—ADDITIONAL SERVICES OF ENGINEER	4
2.1. General	4
2.2. Resident Services During Construction	5
SECTION 3—OWNER'S RESPONSIBILITIES	6
SECTION 4—PERIOD OF SERVICE	7
SECTION 5—PAYMENTS TO ENGINEER	9
5.1. Methods of Payment for Services and Expenses of Engineer	9
5.2. Times of Payment	9
5.3. Other Provisions Concerning Payments	9
5.4. Definitions	10
SECTION 6—CONSTRUCTION COSTS AND OPINIONS OF COST	11
6.1. Construction Cost	11
6.2. Opinions of Cost	11
SECTION 7—GENERAL CONSIDERATIONS	12
7.1. Termination	12
7.2. Reuse of Documents	12
7.3. Controlling Law	12
7.4. Successors and Assigns	12
7.5. Arbitration	13
SECTION 8—SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES	15

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

VOL 008 PAGE 920

THIS IS AN AGREEMENT made as of _____ January _____, 19 84

between _____
The County of Tyler _____ (OWNER) and

Everett Griffith, Jr. & Associates, Inc. _____ (ENGINEER).

OWNER intends to "hard surface" 4.5 to 5.0 miles of existing unpaved or oil
based roads with drainage and construct a new bridge replacement on Old Tyler
Road _____

_____ (hereinafter called the Project).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER's professional engineering representative for the Project as set forth below and shall give professional engineering consultation and advice to OWNER during the performance of services hereunder.

SECTION 1—BASIC SERVICES OF ENGINEER

1.1. General.

1.1.1. ENGINEER shall perform professional services as hereinafter stated which include customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2. Study and Report Phase.

After written authorization to proceed, ENGINEER shall:

1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or

services of the types described in paragraph 3.3, and act as OWNER's representative in connection with any such services.

1.2.3. Provide analyses of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

1.2.4. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.

1.2.5. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to OWNER and setting forth ENGINEER's findings and recommendations with opinions of probable costs for the Project, including Construction Cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").

1.2.6. Furnish five copies of the Report and present and review it in person with OWNER.

The duties and responsibilities of ENGINEER during the Study and Report Phase are amended and supplemented as indicated in paragraph 2 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.3. Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.3.1. In consultation with OWNER and on the basis of the accepted Report, determine the extent of the Project.

1.3.2. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.3.3. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.

1.3.4. Furnish five copies of the above preliminary design documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.4. Final Design Phase.

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1.4.1. On the basis of the accepted preliminary design documents and the revised opinion of probable Project Cost, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.4.2. Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.4.4. Prepare for review and approval by OWNER, his legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.4.5. Furnish five copies of the above documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.5. Bidding or Negotiating Phase.

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.5.1. Assist OWNER in obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.5.2. Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.

1.5.3. Consult with and advise OWNER as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

1.5.4. Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in paragraph 5 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.6. Construction Phase.

During the Construction Phase ENGINEER shall:

1.6.1. Consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract No. 1910-8, (1978 edition). The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in paragraph 6 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.6.2. Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. ENGINEER shall not be re-

sponsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER's efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but ENGINEER shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations ENGINEER shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.

1.6.3. Review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.

1.6.4. Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required; have authority, as OWNER's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.6.5. Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accom-

SECTION 2—ADDITIONAL SERVICES OF ENGINEER

panying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

1.6.6. Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.6.5.

1.6.7. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.6.1 thru 1.6.7, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the Contract Documents.

2.1. General

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters"; these will be paid for by OWNER as indicated in Section 5.

2.1.1. Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3. Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER's control.

2.1.4. Providing renderings or models for OWNER's use.

2.1.5. Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and

audits or inventories required in connection with construction performed by OWNER.

2.1.7. Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for interior design, furniture, furnishings, communications, acoustics, kitchens and landscaping; and providing data or services of the types described in paragraph 3.3 when OWNER authorizes ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.

2.1.8. Services resulting from the award of more separate prime contracts for construction, materials, equipment or services for the Project than are contemplated by paragraph 5.1.1.2, and services resulting from the arranging for performance by persons other than the principal prime contractors of services for the OWNER and administering OWNER's contracts for such services.

2.1.9. Providing any type of field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.10. Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, services after the award of each contract in evaluating substitutions proposed by Contractor(s), and in making revisions to Drawings and Specifications occasioned thereby, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.1.11. Services during out-of-town travel required of ENGINEER other than visits to the site as required by Section 1.

2.1.12. Preparing for OWNER, on request, a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to ENGINEER and which ENGINEER considers significant.

2.1.13. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s),

(3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor(s).

2.1.14. Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial startup, testing, adjusting and balancing); and training personnel for operation and maintenance.

2.1.15. Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

2.1.16. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).

2.1.17. Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.

2.2. Resident Services During Construction.

2.2.1. If requested by OWNER or recommended by ENGINEER and agreed to in writing by the other, a Resident Project Representative will be furnished and will act as directed by ENGINEER in order to assist ENGINEER in observing performance of the work of Contractor(s). Such services will be paid for by OWNER as indicated in paragraph 5.1.2.4.

2.2.2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative and assistants will be set forth in Exhibit B which is to be identified, attached to and made a part of this Agreement before such services begin.

2.2.3. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor(s); but the furnishing of such resident Project representation will not make ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform their work in accordance with the Contract Documents.

2.2.4. If OWNER designates another person to represent OWNER at the Project site who is not ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER under this Agreement will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

SECTION 3—OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.2. Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 3.3. Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters"), data prepared by or services of others, including without limitation core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data or consultations not covered in Section 2; all of which ENGINEER may rely upon in performing his services.
- 3.4. Provide field control surveys and establish reference points and base lines (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of the work.
- 3.5. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.6. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.7. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.8. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.
- 3.9. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER's services.
- 3.10. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of Contractor(s).
- 3.11. Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.12. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4—PERIOD OF SERVICE

4.1. The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the Project including extra work and required extensions thereto.

4.2. The services called for in the Study and Report Phase will be completed and the Report submitted within the stipulated period indicated in paragraph 2 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after authorization to proceed with that phase of services.

4.3. After acceptance by OWNER of the Study and Report Phase documents indicating any specific modifications or changes in the extent of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Project Cost within the stipulated period indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after authorization to proceed with that phase of services.

4.4. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Project Cost, indicating any specific modifications or changes in the extent of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Project Cost for all work of Contractor(s) on the Project within the stipulated period indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after authorization to proceed with that phase of services.

4.5. ENGINEER's services under the Study and Report Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to

OWNER for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over design criteria applicable to the Project.

4.6. After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Project Cost and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s) (except as may be otherwise required to complete the services called for in paragraph 6.2.2.5).

4.7. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written approval by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

4.8. If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER's services and his various rates of compensation shall be adjusted appropriately.

4.9. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.10. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render services more than one year

after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

4.11. In the event that the work designed or specified by ENGINEER is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negoti-

ating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in Exhibit A "Further Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.4 through 4.10 inclusive, will be modified accordingly.

[The remainder of this page was left blank intentionally.]

LUMP SUM METHOD OF PAYMENT

SECTION 5—PAYMENTS TO ENGINEER

5.1. Methods of Payment for Services and Expenses of ENGINEER.

5.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A "Further Description of Basic Engineering Services and Related Matters") as follows:

5.1.1.1. *One Prime Contract.* If only one prime contract is awarded for construction, materials, equipment and services for the entire Project, a lump sum fee of \$ 29,000; but, if the prime contract contains cost-plus or incentive savings provisions for Contractor(s)' basic compensation, a lump sum fee of \$ 27,500.

~~5.1.1.2. *Several Prime Contracts.* If more than one but less than _____ separate prime contracts are awarded for construction, materials, equipment and services for the entire Project, a lump sum fee of \$ _____; but, if any prime contract contains cost-plus or incentive savings provisions for Contractor(s)' basic compensation, a lump sum fee of \$ _____.~~

5.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1. *General.* For Additional Services rendered under paragraphs 2.1.1 through 2.1.17, inclusive (except services covered by paragraph 2.1.7 and services as a consultant or witness under paragraph 2.1.16), on the basis of Payroll Costs times a factor of * for services rendered by principals and employees assigned to the Project.

5.1.2.2. *Special Consultants.* For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.7 or 2.1.17, the amount billed to ENGINEER therefor times a factor of 10%.

5.1.2.3. *Serving as a Witness.* For the services rendered by principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with paragraph 2.1.16, at the rate of \$ * per day or any portion thereof (but compensation for time spent in preparing to appear in *(see Attachment "B" for Rate)

any such litigation, hearing or proceeding will be on the basis provided in paragraph 5.1.2.1).

5.1.2.4. *Resident Project Services.* For resident services during construction furnished under paragraph 2.2.1, on the basis of Payroll Costs times a factor of * for services rendered by principals and employees assigned to field offices in connection with resident Project representation.
*(See Attachment "B" for Rate)

5.1.3. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4. The terms "Payroll Costs" and "Reimbursable Expenses" will have the meanings assigned to them in paragraph 5.4 which appears on the reverse side of this page.

5.2. Times of Payments.

5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3. Other Provisions Concerning Payments.

5.3.1. If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER's bill therefor, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

5.3.2. In the event of termination by OWNER under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of Payroll Costs times a factor of 2.86 for services rendered dur-

ing that phase to date of termination by principals and employees assigned to the Project. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, plus all termination expenses. Termination expenses mean Reimbursable Expenses directly attributable to termination, which shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination, as follows:

20% if termination occurs after commencement of the Preliminary Design Phase but prior to commencement of the Final Design Phase; or

10% if termination occurs after commencement of the Final Design Phase.

5.4. Definitions.

5.4.1. The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory bene-

fits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. For the purposes of this Agreement, the principals of ENGINEER and their hourly payroll costs are:

See Attachment "B"

Payment Schedule

The amount of customary and statutory benefits of all other personnel will be considered equal to -- % of salaries and wages.

5.4.2. Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

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SECTION 6—CONSTRUCTION COST AND OPINIONS OF COST

6.1. Construction Cost.

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost of the entire Project to OWNER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project. [Construction Cost is one of the items comprising Project Costs which is defined in paragraph 1.2.5.] When Construction Cost is used as a basis for payment it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:

6.1.1. For completed construction work the total costs of all work performed as designed or specified by ENGINEER.

6.1.2. For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal for such work.

6.1.3. For work designed or specified but not constructed upon which no such bid or proposal is received, the most recent estimate of Construction Cost, or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.

Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices. No deduction is to be made from ENGINEER's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

6.2. Opinions of Cost.

6.2.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made

on the basis of his experience and qualifications, and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator as provided in paragraph 3.8.

6.2.2. If a Construction Cost limit is established by written agreement between OWNER and ENGINEER, the following will apply:

6.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Project or Construction Cost in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2. Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.

6.2.2.3. ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.

6.2.2.4. If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2.5. If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or quality. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. The providing of such service will be the limit of ENGINEER's responsibility in this regard and, hav-

ing done so, ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

SECTION 7—GENERAL CONSIDERATIONS

7.1. Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

7.2. Reuse of Documents.

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3. Controlling Law.

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

7.4. Successors and Assigns.

7.4.1. OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

7.4.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 7.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

7.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

[The remainder of this page was left blank intentionally.]

7.5. Arbitration

7.5.1. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 7.5.3 and 7.5.4 below. This Agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph 7.5 will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction.

7.5.2. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.5.3. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitra-

tors will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning, any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).

7.5.4. No arbitration arising out of, or relating to, this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

7.5.5. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs 7.5.3 and 7.5.4 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

7.5.6. The award rendered by the arbitrators will be final, not subject to appeal and judgment may be entered upon it in any court having jurisdiction thereof.

[The remainder of this page was left blank intentionally.]

SECTION 8—SPECIAL PROVISIONS, EXHIBITS and SCHEDULES.

8.1. This Agreement is subject to the following special provisions.

8.1.1. Attachment "A" - Special Provisions to contract for Professional services Federal Requirements (seven pages)

8.1.2 Attachment "B" - Fee Schedule (one page)

8.2. The following Exhibits are attached to and made a part of this Agreement:

~~8.2.1. Exhibit A "Further Description of Basic Engineering Services and Related Matters" consisting of _____ pages.~~

~~8.2.2. Exhibit B "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" consisting of _____ pages.~~

8.2.3. None

8.3. This Agreement (consisting of pages 1 to 14, inclusive), together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

ENGINEER:

Tyler County Texas

Everett Griffith, Jr. & Associates, Inc.

By: 

By: , P.E.

Honorable Allen Sturrock

James W. Griffith, P.E., President

County Judge

SPECIAL PROVISIONS
TO CONTRACT FOR PROFESSIONAL SERVICES
FEDERAL REQUIREMENTS

The Project covered by this Contract is being assisted under Title I of the Housing and Community Development Act of 1974 which is administered by the U. S. Department of Housing and Urban Development and the following Special Provisions - Federal Requirements are included in this Contract pursuant to the provisions applicable to such Federal assistance.

<u>Paragraph</u>	<u>Contents</u>	<u>Page</u>
1	NONDISCRIMINATION	1
2	EMPLOYMENT OPPORTUNITIES	1
3	PROHIBITED INTERESTS	2
4	PERSONNEL, EQUIPMENT AND FACILITIES	3
5	SUBCONTRACTING	3
6	COVENANT AGAINST CONTINGENT FEES	4
7	GRATUITIES	4
8	PATENTS	4
9	ACCESS TO RECORDS AND ACCOUNTING SYSTEM	4
10	TERMINATION FOR CAUSE	4
11	TERMINATION FOR CONVENIENCE	5
12	ARBITRATION	5
13	FINDINGS CONFIDENTIAL	6
14	CHANGES	6

1. NONDISCRIMINATION

During the performance of this Contract, the Professional agrees as follows:

- a. The Professional will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Professional 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; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Public Body setting forth the provisions of this nondiscrimination clause.
- b. The Professional will, in all solicitations or advertisements for employees placed by or on behalf of the Professional, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c. The Professional will cause the foregoing provisions to be inserted in all subcontracts for any Work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

2. EMPLOYMENT OPPORTUNITIES

During the performance of this Contract, the Professional agrees as follows:

- a. The Work to be performed under this Contract is on a Project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

- b. The Professional will comply with the provisions of Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The Professional certifies and agrees that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The Professional will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Professional will include this Section 3 clause in every subcontract for Work in connection with the Project and will, at the direction of the Local Public Body, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of 24 CFR Part 135. The Professional will not subcontract with any subcontractor where the Professional has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided the Professional with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the Project, binding upon the Local Public Body, its successors, and assigns. Failure to fulfill these requirements shall subject the Local Public Body, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the Grant Agreement through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

3. PROHIBITED INTERESTS

- a. The Professional is advised that no member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit to arise from the same.

- b. The Professional is advised that no member, officer, or employee of the Local Public Body, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project.
- c. The Professional covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the above-described Project Area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Professional further covenants that in the performance of this Contract no person having any such interest shall be employed.

4. PERSONNEL, EQUIPMENT AND FACILITIES

- a. The Professional represents that he has, or will secure at his own expense, all personnel, equipment and facilities required in performing the Services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Local Public Body.
- b. All the Services required hereunder will be performed by the Professional or under his supervision and all personnel engaged in the Work shall be fully qualified and shall be authorized or permitted under State and local law to perform such Services.
- c. No person who is serving sentence in a penal or correctional institution shall be employed on Work under this Contract.

5. SUBCONTRACTING

None of the Services covered by this Contract shall be subcontracted without the prior written consent of the Local Public Body. The Professional shall be as fully responsible to the Local Public Body for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by the Professional. The Professional shall include these Special Provisions in all subcontracts.

6. COVENANTS AGAINST CONTINGENT FEES

The Professional warrants that he has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this condition shall give the Local Public Body the right to terminate this Contract or, at its discretion, to deduct from the Professional's fee the amount of such commission, brokerage, or contingent fee.

7. GRATUITIES

The Professional is advised that in contracting with or expending Federal funds received for this Project no officers, employees, or agents of the Local Public Body shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

8. PATENTS

If this Contract involves research, developmental, experimental, or demonstration work, and any discovery or invention arises or is developed in the course of or under this Contract, it shall be subject to regulations issued by the U. S. Department of Housing and Urban Development. With respect to those designs, processes, work products, research and administrative systems developed by the Professional which are not the result of, or developed with funds from HUD, or which are otherwise not covered by HUD or other Federal Regulations, shall be the property of the Professional at its option.

9. ACCESS TO RECORDS AND ACCOUNTING SYSTEM

- a. The Professional shall make his records with respect to this Contract available for inspection, audit excerpts and transcriptions by authorized representatives of the Local Public Body, the U. S. Department of Housing and Urban Development, and the Comptroller General of the United States.
- b. The Professional shall have an accounting system which accounts for costs in accordance with generally accepted accounting principles and project costs shall be determined in accordance with FMC 74-4 Cost Principles and 24 CFR Part 570, Subpart C, CDBG Eligible Activities. The Professional must propose and account for costs in a manner consistent with his normal accounting procedures.

10. TERMINATION FOR CAUSE

The Local Public Body may terminate this Contract in whole or in part at any time if the Professional fails to fulfill his obligation under this contract: Provided, the Professional is given written notice stating the cause and effective date of termination at least fifteen days before the effective date of termination and is given an opportunity to discuss the situation with the Local Public Body prior to the termination. In such

event, all finished or unfinished documents, data, studies, and reports prepared by the Professional under this Contract shall, at the option of the Professional under this Contract, become its property and the Professional shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the Professional shall not be relieved of liability to the Local Public Body for damages sustained by the Local Public Body by virtue of any breach of the Contract by the Professional and the Local Public Body may withhold any payments to the Professional, for the purpose of setoff until such time as the exact amount of damages due the Local Public Body from the Professional is determined.

11. TERMINATION FOR CONVENIENCE

The Local Public Body may terminate this Contract at its convenience: Provided, the Professional is given written notice of the termination at least thirty days prior to the effective date of termination and is given an opportunity to discuss the situation with the Local Public Body prior to the termination. The Professional will be paid an amount which bears the same ratio to the total compensation as the services actually performed are to the total services of the Professional covered by this Contract, less payments of compensation previously made: Provided, however, that if less than sixty percent of the services covered by this Contract have been performed upon the effective date of such termination, the Professional shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Professional during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. All finished and unfinished documents, data, studies, and reports prepared by the Professional under this Contract shall, at the option of the Professional become its property and such property or copies thereof, at the option of the Professional shall be delivered to the Local Public Body upon receipt of compensation therefore.

12. ARBITRATION

- 12.1 All claims, disputes and other matters in question between the parties to this Agreement, arising out of, or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration, arising out of, or relating to this Agreement, shall include by consolidation, joinder or in any other manner, any additional party not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by all the parties hereto. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitration of any dispute not described herein or with any party not named or described herein. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

12.2 Notice of the demand for arbitration shall be filed in writing with the other party of this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred on the applicable statute of limitations.

12.3 The award rendered by the arbitrators shall be final, and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

13. FINDINGS CONFIDENTIAL

All of the reports, information, data, etc., prepared or assembled by the Professional under this Contract are confidential and the Professional agrees that they shall not be made available to any individual or organization without prior written approval of the Local Public Body.

14. CHANGES

The Local Public Body may, from time to time, request changes in the scope of the Services of the Professional to be performed hereunder. Such changes, including any increase or decrease in the amount of the Professional's compensation, which are mutually agreed upon by and between the Local Public Body and the Professional, shall be incorporated in written amendments to this Contract.

FEE SCHEDULE

VOL. **008** PAGE **941**

EVERETT GRIFFITH, JR. AND ASSOCIATES, INC.
408 NORTH THIRD STREET
LUFKIN, TEXAS 75901

All projects will be subject to a cost proposal and contractual agreement based on the following fee schedules. All unpaid balances beyond 30 days are subject to a 1-1/2% per month finance charge.

RATE SCHEDULE

Engineering

Principal	\$56/hour
Chief Engineer	\$52/hour
Project Manager	\$48/hour
Staff Engineer or Architect	\$36/hour
Engineering Tech. I	\$32/hour
Engineering Tech. II	\$28/hour
Draftsman I	\$22/hour
Draftsman II	\$18/hour
Inspector	\$22/hour
Secretary	\$12/hour

Surveying

Field Services Supervisor	\$39/hour
Surveying Tech I	\$27/hour
Surveying Tech II	\$23/hour
Draftsman I	\$18/hour
Draftsman II	\$14/hour
4 m.f.p.	\$67/hour
3 m.f.p.	\$56/hour
2 m.f.p.	\$39/hour
For each man beyond 4 men	\$11/hour

Equipment and Vehicles

Vehicles	30¢/mile
Total Station	\$75/day
Topcon Guppy	\$50/day
Computer (HP-85, Lanier, or Monroe 1880)	\$10/hour (for time computer is tied up)
Plotter	\$45/hour (for time plotter is tied up)

Reimbursable Expenses

Copies 8-1/2" x 11	10¢ per copy
8-1/2" x 14	10¢ per copy
11" x 17	30¢ per copy
Blue Prints and Binding	At Cost
Long Distance Calls, Travel Expenses and Subsistence	At Cost

EFFECTIVE DATE: August 1, 1983