

**CONTRACT #: C-08-127-04-22**

**AMENDED AND RESTATED  
CONTRACT AGREEMENT FOR ENGINEERING SERVICES  
BETWEEN**

**COUNTY OF HIDALGO**

**and**

**L&G ENGINEERING LABORATORY, L.L.C.**

**PREPARED ON \_\_\_\_\_**

**For**

**GEOTECHNICAL ENGINEERING AND CONSTRUCTION  
MATERIALS TESTING SERVICES  
FOR HIDALGO COUNTY PRECINCT No. 3**

STATE OF TEXAS §

COUNTY OF HIDALGO §

**AMENDED AND RESTATED CONTRACT AGREEMENT  
FOR  
GEOTECHNICAL ENGINEERING AND CONSTRUCTION MATERIALS  
TESTING SERVICES**

This AMENDED AND RESTATED Contract Agreement for Geotechnical Engineering and Construction Materials Testing Services agreement is made on March 3, 2009 between Hidalgo County, and L & G Engineering Laboratory, L.L.C.

WHEREAS, Hidalgo County acting by and through County of Hidalgo, Pct # 3 and L & G Engineering Laboratory, L.L.C. entered into that certain Contract Agreement for Geotechnical Engineering and Construction Materials Testing Services (the “Agreement”) dated April 11, 2008;

WHEREAS, the parties now find the need to amend the Agreement to further define the fee schedule for geotechnical services by including the Geotechnical Field Services rates and as such have agreed it is in the best interest of both parties to amend and restate the entire Agreement.

NOW THEREFORE, for and in consideration of the addition of the Geotechnical Field Services fee schedule and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hidalgo County and L & G Engineering Laboratory, L. L. C. hereby agree to the amendment of the Agreement to include the Geotechnical Field Services fee schedule on Attachment B to the Agreement and restate the Agreement to read as follows:

**PART I – PARTIES AND SERVICES**

This agreement is made on March 3, in the year 2009, between **County of Hidalgo, Pct #3**, hereinafter called the **Client**, and **L&G Engineering Laboratory, L.L.C.**, hereinafter called the **Laboratory**, for **Geotechnical and Construction Materials Testing Services**, hereinafter called the **Services**.

**PART II – FEES**

The fees for **Services** rendered shall be in accordance with the attached Attachment B, entitled “**Schedule of Fees, FY 2008 & 2009.**”

### **PART III – TERMS AND CONDITIONS**

#### **ARTICLE 1. SERVICES – LABORATORY SHALL:**

- 1.0 Perform Geotechnical & Construction Material Testing Services for Hidalgo County Pct. #3 as identified in Attachment A “Scope of Services”.
- 1.1 Act for the **Client** in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with the standards of the Profession.
- 1.2 Provide only those **Services** that, in the opinion of the **Laboratory**, lie within the technical and professional area of expertise of the **Laboratory** and which **Laboratory** is adequately staffed and equipped to perform.
- 1.3 Perform all technical services under the general direction of a Licensed Professional Engineer registered in the State of Texas and in substantial accordance with the basic requirements of the appropriate Standards of the American Society for Testing and Materials, where applicable, or other standards as designated by the **Client**.
- 1.4 Promptly submit all formal construction materials test reports for all tests, observations and services performed indicating where applicable, compliance with project specifications or other documents. Such reports shall be complete and factual. Such reports shall cite the test performed, methodology employed, test values obtained, and locations where tests were performed.
- 1.5 Promptly submit formal geotechnical reports for geotechnical explorations requested by the **Client**. Such reports shall contain a site plan with the boring locations indicated, boring logs, a report of the results of laboratory testing, and contain design recommendations pertaining to the planned construction.
- 1.6 Employ testing equipment and machines which have been calibrated within a period not exceeding twelve (12) months from the time of use by devices of accuracy traceable to the National Institute for Standards and Technology (NIST) of the United States Department of Commerce, and submit upon request by the Client, documentation of such calibration.
- 1.7 Report Distribution and Ownership

- 1.7.1 Laboratory will consider all reports to be the confidential property of the **Client**, and will distribute reports only to those persons, organizations or agencies as designated in writing by the **Client** and its authorized representative.
- 1.7.2 **Client** acknowledges the **Laboratory's** documents as instruments of Professional service. Nevertheless, the plans and specifications prepared under this agreement shall become the property of the **Client** upon completion of the work and payment will be made in full of all monies due to the **Laboratory**. The **Client** shall not re-use or make any modification to the reports without prior written authorization of the **Laboratory**. Any unauthorized use reuse of the documents will be at the **Client's** sole risk.
- 1.8 **Laboratory** will retain all pertinent records relating to services performed for a period of 5 years following submission of all reports, during which period the records will be made available to the **Client** within a reasonable time.

**ARTICLE 2. CLIENT'S RESPONSIBILITIES-Client or its authorized representative shall:**

- 2.1 Provide the **Laboratory** with all the plans, specifications, addenda's change orders, approved shop drawings and other information for the proper performance of the **Laboratory**.
- 2.3 Issue authorization "Attachment C" in writing, giving **Laboratory** free access to any project involved using the Services, and to all shops or yards or yards where materials are prepared and stored.
- 2.3 Designate in writing those persons or firms who are authorized to receive copies of **Laboratory's** inspection and test reports.
- 2.4 Advise **Laboratory** sufficiently in advance of any operations so as to allow for assignment of personnel by the Laboratory for completion of the required service. Such advance notice shall be in accordance with that established by mutual agreement of the **Client** and **Laboratory**.
- 2.5 Direct any Contractor where testing is to take place, either by construction contract or direct written order to:
- (a) Secure and deliver to **Laboratory**, at no cost to **Laboratory**, preliminary representative samples of materials it proposes to use which require laboratory testing.

(b) Furnish such casual labor and all facilities needed by the Laboratory to obtain and handle samples at the testing site and to facilitate the specified inspection of tests.

(c) Provide and maintain for the use of the **Laboratory**, adequate space at the material testing site for safe and secure storage and proper curing of test specimens that must remain on the project site prior to laboratory testing.

### **ARTICLE 3. GENERAL CONDITIONS**

- 3.1 **Laboratory**, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to construction materials testing customarily vested in applicable project architects or engineers, or any other design professionals, agencies or authorities.
- 3.2 **Laboratory** shall not be responsible for acts of omissions of any party or parties involved in the design of any project where material testing is to take place or the failure of any Contractor or Subcontractor to construct any aspect of such project in accordance with recommendations contained in any correspondence or verbal recommendation issued by **Laboratory**.
- 3.3 **Laboratory** is not authorized to revoke, alter or relax, enlarge or release any requirements of the Client's specifications or other documents nor to approve or accept any portion of the work, unless specifically authorized in writing by Client or his authorized representative. **Laboratory** shall not have the right of rejection or the right to stop the work, except for such periods as may be required to conduct sampling, testing, or inspection of operations covered by the **Agreement**.
- 3.4 Either party may terminate this **Agreement** on thirty (30) days written notice or by mutual agreement. If this **Agreement** is terminated by either party, **Laboratory** shall be paid in full for all services performed through the termination date, and the **Client** shall be provided with a complete report of the results of tests and analysis conducted prior to termination of **Agreement**.
- 3.5 Neither **Client** nor **Laboratory** may delegate, assign, sublet or transfer his duties or interest in this Agreement without the written consent the other party.
- 3.6 The only warranty made by **Laboratory** in connection with its service performed hereunder is that it will use the degree of care and skill as set in Article I above. No other warranty, expressed or implied, is made or

intended for services provided hereunder or furnishing oral or written reports of findings made.

### 3.7 Successors and Assigns.

3.7.1 **Client** and **Laboratory** each binds themselves and their partners, successors, executors, administrators, assign legal representative to the other party to this **Agreement** and to the partners, successors, executors, administrator, assigns and legal representative of such other party in respect to all covenants, agreements, and obligations of this **Agreement**.

3.7.2 Neither **Client** or **Laboratory** 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 3.7.1 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 **Laboratory** from employing such independent Consultants, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.

3.7.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the **Client** and **Laboratory**.

### 3.8 Non Binding Mediation

3.8.1 In the event of a dispute or claim between **Laboratory** and **Client** arising out of or related to this Agreement, both parties agree to submit to a Non-Binding Mediation with the hope of achieving a satisfactory resolution prior to proceeding with formal litigation processes, including the filing of claims against parties (unless a failure to file causes waiver or loss of rights or subsequent action).

3.8.2 Such Non-Binding Mediation shall be conducted by a mediator and rules agreed to by both parties. Both parties shall mediate through a selected and mutually agreed to senior representative of each respective party.

3.8.3 Both the **Laboratory and Client** will bind their respective consultants, contractors, vendors, fabricators, and suppliers involved in this Project to contracts which will provide similar Non-Binding Mediation as the primary dispute resolution method to other agreements.

### 3.9 Indemnity

- 3.9.1 The Owner will require the Laboratory, in connection with work produced under this agreement, to hold harmless and indemnify the Client, and each of its officers, agents and employees, from any and all liability claims, losses, or damage arising out of or alleged to arise from Laboratory's negligence in the performance of the work described in this agreement.

#### **ARTICLE 4. INSURANCE**

- 4.1 **Laboratory** shall secure and maintain throughout the full period of this **Agreement** Statutory Workmen's Compensation Coverage, Employee's Liability and Comprehensive General Liability Insurance Coverage. **Laboratory** will upon request, file certification of such Insurance coverage with the **Client** or its authorized representative.

- 4.2 **Omitted**

#### **ARTICLE 5. PAYMENTS:**

- 5.1 **Client** will pay **Laboratory** for Services rendered while work is in progress as executed through a lump sum fee assigned to each **Work Authorization** in accordance with Article 2 Sec. 2.2 herein. For each **Work Authorization**, the **Laboratory** shall prepare and submit to the **Client** monthly progress reports in sufficient detail to support the progress of the work done.

#### **ARTICLE 6. EXTENT OF AGREEMENT:**

- 6.0 After execution of this **Agreement**, the **Laboratory** shall proceed with work, only as authorized by the **Client** through an agreed **Work Authorization** document sampled in Attachment "C", attached hereto and made part of this **Agreement**.
- 6.1 The **Agreement**, including these terms and conditions, represents the entire agreement between the **Client** and **Laboratory** and supercedes all prior negotiations, representations or agreements, written or oral. The **Agreement** may be amended only by written instrument signed by **Client** and **Laboratory**.
- 6.2 The **Agreement** shall remain in force for a period of one (1) year from the date this agreement is signed by all parties. Further, the **Client** reserves the right to extend this agreement for one (1) additional year, but solely after successfully negotiating prices for the concurrent year's contract. Upon failure to successfully negotiate prices as aforementioned, the **Client** may opt not to extend the contract for the additional one (1) year and may

proceed with solicitation of the contract for the ensuing year.

**ARTICLE 7. APPLICABLE LAW:**

7.1 The laws of the State of Texas shall govern the **Agreement**. Venue shall be in County of Hidalgo.

**ARTICLE 8. ATTORNEY FEES:**

8.1 In the unlikely event that a dispute occurs and is litigated, or a cause of action in the law or equity is filed concerning the operation, construction interpretation or enforcement of this agreement, the losing party shall bear the cost of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including but not limited to court costs, deposition fees, and expert witness fees, out of pocket expenses and travel expenses which are incurred by the prevailing party.

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

**LABORATORY:**

**CLIENT:**

\_\_\_\_\_  
Jacinto Garza, P.E., President  
L & G Engineering Laboratory, LLC  
2100 W. Expressway 83  
Mercedes, Texas 78570

\_\_\_\_\_  
Hon. Juan D. Salinas, III  
Hidalgo County Judge  
100 E. Cano, 2nd Floor  
Edinburg, Texas 78540

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

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

ATTEST:

\_\_\_\_\_

**APPROVED AS TO FORM:**

ATLAS & HALL, LLP

By: \_\_\_\_\_  
Stephen L. Crain

**ATTACHMENT B**

**Geotechnical Field Services**

Mobilization	\$400.00 / Day
Stand-By Time	\$175.00 / Hr.
Texas Cone Penetration Test (Tex-132)	\$5.00/Ea.
Soil Boring / Solid Stem	\$ 28.00 / Lf.
Soil Boring / Hollow Stem	\$ 28.00 / Lf.
Soil Boring / Mud Rotary	\$ 28.00 / Lf.
Support Truck	\$ 1.50 / Mi.
Peizometer / Monitoring Well	By Quote