

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MATERIALS TESTING AND LABORATORY SERVICES
NEW HIDALGO COUNTY COURTHOUSE PROJECT
C-18-220-09-25**

THIS AGREEMENT (“Agreement”) is made effective the 25th day of September, 2018 by and between HIDALGO COUNTY, TEXAS, (“Owner”) and TERRACON CONSULTANTS, INC., a Delaware Corporation (“Laboratory”). The Owner may at its sole option appoint a designee including, without limitation, its Program Manager to administer the Services of this Agreement and otherwise act on the Owner’s behalf in whole or in part.

W I T N E S S E T H:

WHEREAS, the Owner requires construction materials testing and laboratory services (the “Services,” as defined herein) for the New Hidalgo County Courthouse Project (“Project”);

WHEREAS, pursuant to Texas Government Code Chapter 2254 (the “Texas Professional Services Procurement Act”) and other applicable laws, the Owner requested proposals from a professional laboratories to assist the Owner by providing the Services;

WHEREAS, Owner has according to applicable law selected the Laboratory to provide the Services to Hidalgo County in accordance to the Request for Qualifications (RFQ) Procurement Packet and any other applicable documents and requirements.

WHEREAS. The Laboratory agrees to provide such Services according to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, Owner and Laboratory do mutually agree as follows:

1. Scope of Services. The Laboratory agrees to provide to Owner the types of Services described in **Exhibit "A,"** "Services to be Performed by the Laboratory." Specific Services to be provided shall be set out in each duly approved and executed Work Authorization on the form attached as Exhibit "C," "Work Authorization Form." The Owner and Laboratory agree that all Services provided under all Work Authorizations shall be performed according to the terms of each such Work Authorization and the terms of this Agreement as if the terms of this Agreement were set forth at length in each Work Authorization.

2. Standard of Care. The Laboratory, in providing its Services for the Project, shall at all times exercise not less than the standard of professional care customarily exercised by nationally-recognized laboratory service firms practicing in the State of Texas performing services similar to those required by this Agreement and for the Project. The Services and deliverables provided by the Laboratory shall comply with all laws, codes, statutes, ordinances, orders, rules and regulations of all federal, state, county and local governmental agencies having jurisdiction over the Project and the Project's design and construction, which are applicable to the Laboratory's Services. The Laboratory shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and in conformance with the Project's schedule as modified from time to time and applicable Work Orders. The provisions of this Section shall be referred to as the "Standard of Care" by which Laboratory shall perform all of its Services.

3. Non-Exclusive Services of Laboratory. The Laboratory shall not be considered the exclusive provider of the laboratory services it will provide under this Agreement. The Owner reserves

the right to obtain services of the same or similar type as the Services from sources other than the Laboratory and in doing so shall not be in violation of any terms or conditions of this Agreement.

4. Term. This Agreement becomes effective when fully executed by both parties and will terminate at the latter of 100% completion of the Project, or the completion of all Work Authorizations that have not been completed, unless sooner terminated as provided herein. The Laboratory will not begin its Services, or any portion of Services, or incur costs until authorized in writing by the Owner with each respective duly approved and executed Work Authorization.

5. Compensation. The maximum amount payable under this Agreement shall not exceed the amounts due for each duly approved and executed Work Authorization except to the extent a duly approved and executed Amendment is issued, as provided hereinafter. The Laboratory shall submit periodic requests for payment within (30) thirty days after proper and timely completion of each Work Authorization. The request for payment shall be made using forms acceptable to and approved by the Owner and shall show, without limitation, the total amount earned to the date of submission and the amount due and payable as of the date of the current billing. Upon receipt of said request for payment, Owner shall submit a requisition for payment for said Services in the customary manner provided for payments utilized by the Owner. Laboratory agrees to separately account for the receipt and/or expenditure of funds received pursuant to this Agreement and to keep accurate books and records of all such receipts and/or expenditures. All payments to Laboratory shall be mailed to the address shown in the Section below entitled "Notices." It is the Laboratory's responsibility to identify and follow all billing requirements of the Owner, including its Purchasing Department.

6. Inspection of Services. The Owner has the right at all reasonable times to inspect or otherwise evaluate the Services performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made on the premises of the Laboratory, or of a consultant of the

Laboratory, the Laboratory shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the Services and shall be solely for the benefit of the Owner.

7. **Amendments.** Additional or modified Services may be provided after execution of this Agreement without invalidating this Agreement or a Work Authorization. If it becomes necessary at any time during the term of this Agreement to materially change the scope of Services, schedule, compensation, or other aspect or character of this Agreement or one or more Work Authorizations, an Amendment shall be executed using the Amendment Form attached as **Exhibit "D"** to this Agreement. The Owner retains the right to reject any such Amendment proposed by the Laboratory. Any such Amendments shall be made in writing, agreed to by all parties hereto, and duly approved and executed before any such modified Services are begun. Such prior approval is a condition precedent to any obligation to pay for such amended Services. If the Owner finds it necessary to require changes in completed Services because of errors made by the Laboratory, the Laboratory shall correct the Services at no cost to the Owner, without an Amendment to the Agreement, which shall not be Owner's exclusive remedy for such errors. If the changes are made at the request of the Owner and are not due to errors of the Laboratory, the Owner will compensate the Laboratory for the additional Services or amended terms through the Amendment at the same rate of pay established in **Exhibit "B,"** "Laboratory Rates." If payment for the additional or modified Services will cause the maximum amount payable under this Agreement to be exhausted, an Amendment shall be proposed in accordance with all State procurement laws.

8. **Reporting.** The Laboratory shall provide appropriate reporting of its testing and Laboratory services as required by this Agreement, any Work Authorization and the Project's Program

Manager. The Laboratory shall also promptly advise the Owner in writing of events that have a significant impact upon the Agreement, including problems, delays, or adverse conditions or other events that could materially affect the Project's or Laboratory's ability to meet time schedules. This disclosure shall be accompanied by a statement by the Laboratory of recommended or immediate action taken, or contemplated, and any Owner or other agency or entity assistance needed to resolve the situation.

9. Ownership of Documents. The Laboratory assigns upon creation to the Owner all rights of ownership including, without limitation, copyrights in all documents and data prepared by the Laboratory and any of its consultants of any tier under this Agreement in any medium including all electronic data in native format. All documents furnished to the Laboratory or its consultants of any tier by the Owner shall remain the property of the Owner. All reports, sketches, photographs, calculations, and other data prepared under this Agreement shall be delivered, upon request, to the Owner without restriction or limitation. The Laboratory shall not be liable for the unauthorized reuse or modification of its work product. The Laboratory may, at its own expense, have copies made of such documents or any other data furnished to the Owner under this Agreement.

10. Suspension of Services. Should Owner desire to suspend the Services under this Agreement or one or more Work Authorizations, but not terminate this Agreement or any Work Authorization, the Owner shall provide thirty (30) calendar days notification to Laboratory. The thirty-day notice may be waived as agreed in writing by both the Owner and Laboratory to that effect. The Services under this Agreement or any Work Authorization(s) as applicable may be reinstated and resumed in full force and effect at the Owner's sole option within fourteen (14) days of receipt of written notice from the Owner to the Laboratory. The fourteen-day notice may be waived as agreed in writing by both the Owner and Laboratory. If the Owner suspends the Services, on whole or in part, the

Termination Date as identified above shall not be affected, and this Agreement will terminate as provided in this Agreement.

11. Progress and Coordination. The Laboratory shall, from time to time during the progress of the Services confer and meet with the Owner and its consultants and contractors. The Laboratory shall prepare and present such information as may be pertinent and necessary, or as may be requested by the Owner, in order to evaluate the Laboratory's Services.

At the request of the Owner or the Laboratory, conferences shall be provided at the Laboratory's office, the offices of the Owner, or at other locations designated by the Owner. These conferences shall also include evaluation of the Laboratory's Services when requested by the Owner.

If funds by other agencies or entities are to be used for the development of the Project under this Agreement, the Laboratory's Services will be subject to periodic review and approval by such other agencies or entities, including those of the city, county, state and/or federal agencies.

Should it be determined that the progress in the production of the Laboratory's Services does not satisfy the requirements of any approved Work Authorization, the Owner shall review the approved Work Authorization with the Laboratory to determine the corrective action needed by the Laboratory, which corrections the Laboratory shall promptly take.

12. Independent Contractor. Laboratory shall comply with all applicable Owner policies and with any applicable federal, state or local laws, regulations, orders or ordinances applicable to the Services provided by Laboratory under this Agreement. Notwithstanding the foregoing sentence, Laboratory represents and warrants that it is an Independent Contractor and neither it nor any of its employees are employees of the Owner or any agency thereof, and represents and warrants that neither it nor any of its employees desire or request any fringe benefits provided to employees of the Owner and/or any agency thereof, including, but not limited to benefits associated with the Owner's civil

service program. Laboratory agrees to be responsible for all federal income tax, withholding or social security tax liability that might arise from payments received hereunder. The Laboratory shall be solely responsible for all Laboratory means and methods by which it performs the Services, notwithstanding the administration of this Agreement by the Owner of its designees including, without limitation, the Project Program Manager. The Laboratory shall provide its Services in cooperation with the services provided by Owner and Owner's consultants and contractors including, without limitation, the Architect, Program Manager and Construction Manager (collectively, "Owner's consultants and contractors") and shall coordinate its services with those services provided by Owner and Owner's consultants and contractors.

13. Subcontracting and Assignment. The Laboratory shall not assign the Agreement or any interest therein without the prior written consent of the Owner. The Laboratory shall bind every consultant by written contract to accept, incorporate and observe all the terms of this Agreement to the extent that they may be applicable to the consultant. The Laboratory shall be fully liable for all acts and omissions of its consultants.

14. Termination. Owner may terminate this Agreement or any Work Authorization, in whole or in part, at any time for any reason or no reason at all upon giving thirty (30) days prior written notice to the Laboratory. If Laboratory fails to deliver Services according to the Standard of Care, fails to achieve the schedule and other requirements of the Owner, or if Laboratory fails to properly and timely comply with all terms of this Agreement and all Work Authorizations, then Owner shall have the right to terminate this Agreement and all Work Authorizations, in whole or in part, upon the giving of ten (10) days prior written notice to Laboratory.

15. Ethics Standards. The Laboratory acknowledges the following Ethics Standards and shall at all times while performing any obligations under this Agreement comply and cause all

Laboratory Parties, as defined herein, to comply with and not breach any applicable Ethics Standards including, without limitation the following:

- A. It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the Owner, or to solicit, demand, accept or agree to accept from another person, entity or organization, anything of value, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or qualification therefore pending before any department or agency of the Owner.
- B. It shall be a breach of ethics for anything of value, gratuity or offer of employment to be offered or made by or on behalf of Laboratory or a Laboratory Party or higher tier consultant for any contractor for the Owner, or any person associated therewith, as an inducement for the award of a contract or order.
- C. No public official shall have an interest in this Agreement except in accordance with Chapter 171 of the Texas Local Government Code.
- D. Except as permitted under this Agreement, Laboratory and all Laboratory Parties shall not engage in private communication with a member of the Hidalgo County Commissioners Court or department heads regarding any procurement of goods or services by the Owner.

Any such private communications shall not be binding on the parties to this Agreement.

Members of the Commissioners Court are required to make a reasonable effort to inform themselves regarding potential procurements and have a duty to inquire of vendors, their representatives or employees, the nature of any private communication being sought prior to engaging in any communication. "Private Communication" means communication with Laboratory or any Laboratory Party participating outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee or negotiation, which has been specifically authorized by the governing body.

16. Insurance. Laboratory agrees to provide the insurance covering its activities in providing the Services for Owner in an amount not less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code, and Exhibit "E" "Insurance Requirements." The Laboratory shall furnish Owner certificates of insurance before beginning any Services and other proof of insurance required by Exhibit E.

17. Payment of Franchise Tax. The Laboratory hereby certifies that the Laboratory is not delinquent in Texas franchise tax payments, or that the Laboratory is exempt from, or not subject to, such tax. A false statement concerning Laboratory's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the Owner.

18. Invalidity of Terms. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law. In the event any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall be deemed stricken and shall not affect any other provision of this Agreement or the application of such provisions to other persons or circumstances, and the balance of this Agreement shall be enforced to the greatest extent permitted by law.

19. Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Laboratory. The Laboratory shall require in its agreement(s) with its consultant(s) that Owner is a third-party beneficiary to such agreement(s).

20. Indemnities.

A. Definitions

.1 “Claims”: any and all claims, demands, causes of action and claims for Loss brought, alleged or asserted through any direct claim, cross-claim, counterclaim or claim for contribution or indemnity that arise, in whole or in part, in connection with this Agreement, its performance or interpretation or with respect to the Project or Services this Agreement describes;

.2 “Defend”: provide competent legal defense to the Owner Parties with legal counsel and experts reasonably acceptable to Owner at no cost to any Owner Parties;

.3 “Loss”: any and all actual and alleged loss, costs and damages of any nature including, without limitation, actual, special and consequential damages, vicarious liability, personal injury, death, property damage including loss of use thereof, and economic loss, and any expense including, without limitation, reasonable attorneys’ and experts’ fees and all costs of litigation and defense;

.4 “Owner Parties”: the Owner and its County Judge, Commissioners, Commissioners’ Court, officials and employees, and regardless of whether employed by the Owner, its agents and representatives at the time of a Claim;

.5 “Laboratory Parties”: the Laboratory, all entities that comprise Laboratory if more than one, and their parents, affiliates, subsidiaries, and their present and former officers,

directors, members, managers, partners, joint venturers, consultants of any tier, employees, agents and representatives;

B. General Indemnity. The Laboratory shall to the fullest extent permitted by law indemnify and hold harmless the Owner Parties from and against all Loss and Claims Loss to the extent such Loss is caused by the negligent acts or omissions, negligent misrepresentation, breach of contract or breach of any other legal duty of any Laboratory Parties.

C. Indemnity for Employee Injury Claims. THE LABORATORY SHALL TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW DEFEND, INDEMNIFY AND HOLD HARMLESS ALL OWNER PARTIES FROM AND AGAINST ALL CLAIMS AGAINST ANY OWNER PARTIES FOR THE PERSONAL INJURY OR ALLEGED PERSONAL INJURY OR DEATH, AT THE PROJECT SITE OR IN CONNECTION WITH THE PROJECT, OF AN EMPLOYEE OF ANY LABORATORY PARTIES, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, BROUGHT BY, THROUGH OR UNDER SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (REFERRED TO HEREIN AS AN "EMPLOYEE INJURY CLAIM"), REGARDLESS OF WHETHER ANY SUCH CLAIMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF ANY OWNER PARTIES INDEMNIFIED, DEFENDED OR HELD HARMLESS. THESE OBLIGATIONS SHALL NOT BE LIMITED BY ANY INSURANCE PROVISIONS OR BENEFITS PAYABLE UNDER ANY EMPLOYEE BENEFITS INCLUDING, WITHOUT LIMITATION, WORKERS' COMPENSATION OR DISABILITY ACTS.

D. The parties intend that the indemnity provisions shall be enforced the fullest extent permitted by Chapter 151 of the Texas Insurance Code. These indemnity and waiver obligations shall survive termination or expiration of this Agreement.

21. Dispute Resolution and Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created in this Agreement or any Work Authorization are deemed performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas. Subject to any mediation the parties agree to participate in, all disputes arising between the Laboratory and Owner shall be resolved by a jury trial in a State District Court located in Hidalgo County, Texas. The Laboratory agrees to cooperate with and assist Owner in any disputes, to which Laboratory is not a party, between Owner and its Architect, Program Manager, Construction Manager, consultants, contractors or others concerning or related to any aspect of the Project, at the cost and expense of Owner. Without limitation to any other term of this Agreement, Laboratory shall pay Owner's reasonable attorneys' and experts' fees and all costs of litigation and defense to the extent the Owner prevails against the Laboratory on any claim for breach of contract or in *quantum meruit*.

22. Laboratory Financial Records for Project Services. Laboratory shall keep according to GAAP full and detailed records pertaining to Services that it is required to perform and shall, without cost, furnish a copy of such records to Owner upon request. Laboratory shall exercise such controls as may be necessary for proper financial management under this Agreement, which shall be reasonably acceptable to Owner and sufficient to substantiate all costs incurred. Owner and Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, Laboratory's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, Consultant's agreements,

consultant agreements, proposals, purchase orders, vouchers, memoranda and other data relating to Laboratory's performance of this Agreement. In the event any such audit is of documents the Owner does not require to be submitted with invoices, the Owner will consider making review of such materials at the offices of the Laboratory. In the event that any audit reveals an error or discrepancy of any nature whatsoever, such error or discrepancy will be corrected promptly, and any moneys owing and due Owner will be paid promptly. Laboratory shall not charge Owner for any costs incurred by Laboratory while assisting Owner with audits performed pursuant to this Agreement. If the audit reveals that Laboratory has overstated any cost to Owner by more than three percent (3%) of the Laboratory's total fees paid under this Agreement and/or if Laboratory is delinquent in furnishing any records or reports requested by the Owner, and Owner shall have chosen to have an audit and accounting made of Laboratory's financial records, then Laboratory shall pay the cost of such audit and accounting. Laboratory shall be found delinquent in furnishing records, if, after the 14th day after the Owner requests the records or reports the Laboratory fails to provide the requested records or reports. Laboratory shall preserve these records for a period of five years after final payment, and for so long thereafter as there may remain any unresolved questions or disputes regarding any item or for such longer period as may be required by law.

23. No Waiver. No waiver by Owner of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

24. Entire Agreement. This Agreement together with any duly authorized and executed Work Authorizations and Amendments contain the entire and integrated Agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set

forth herein except to the extent of any representations made by Laboratory in its Statement of Qualifications. This Agreement may be modified or amended only by agreement in writing executed by Owner and Laboratory, and not otherwise.

25. Notices. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may be subsequently specified by written notice delivered in accordance herewith:

If to Owner: County of Hidalgo
Attention: Valde Guerra
100 E. Closner Boulevard
Edinburg, Texas 78539

If to Laboratory: Terracon Consultants, Inc.
Attn: Alfonso A. Soto, Principal
1506 Mid Cities Drive
Pharr, Texas 78577

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addresses or, if mailed at such time as it is deposited in the United States mail. Routine Project communications shall be with the authorized representative of the Program Manager.

26. Executions of Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become reasonably necessary or convenient to effectuate and carry out the terms of this Agreement.

27. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

28. Gender. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neutral gender, and the singular shall include the plural whenever and as often as may be appropriate.

29. Authority. The execution and performance of this Agreement by Owner and Laboratory have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Owner and Laboratory in accordance with its terms.

30. Professional Seal. All documents and data furnished by the Laboratory to the Owner shall, to the extent required by law, bear a Professional seal of a licensed Professional Engineer employed by the Laboratory.

31. Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of the Owner under this Agreement, the Owner may terminate this Agreement upon sixty (60) days written notice to the Laboratory. Such appropriations by the Owner's Commissioners' Court shall be a condition precedent to the Owner's obligation to pay the Laboratory. The Owner agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1996).

32. Immunities. Nothing in this Agreement intended to and Owner does not hereby waive, release or relinquish any right to assert any of the defenses Owner enjoys by virtue of the state or federal

constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Owner as to any claim or action of any person, entity, or individual against Owner.

33. Scope of Agreement. This Agreement is comprised on this Agreement, any duly approved and executed Work Authorization and Amendments and the following Exhibits:

EXHIBIT A -Scope of Services to be provided by the Laboratory contained within Laboratory’s Proposal dated July 23, 2018

EXHIBIT B -Laboratory’s Rates

EXHIBIT C -Work Authorization Form

EXHIBIT D -Amendment Form

EXHIBIT E -Insurance Requirements

RFQ EXHIBIT “A-1”

EXECUTED as of the day and year first written above.

**OWNER:
COUNTY OF HIDALGO, TEXAS**

By: _____
Ramon Garcia, County Judge

**LABORATORY:
TERRACON CONSULTANTS, INC.**

By: _____

Printed Name _____

Title: _____

ATTEST:

Arturo Guajardo Jr., County Clerk

Exhibit “A”

Services to be Provided by Laboratory

Construction materials observation and testing services for this project on an “as requested” basis during construction to be coordinated with the CMAR contractor or Project Management representative.

The technicians assigned to the project will be qualified and equipped to perform the following field services:

- Steel
- Concrete (includes but is not limited to Reinforcing Steel Observation, Observation for Anchors cast in concrete)
- Soils
- Cast-In-Place Deep Foundations
- Structural Masonry
- Floor Flatness/Levelness
- Fireproofing Testing and Inspection
- Curtain Wall Field Testing
- Concrete Floor Moisture Testing

Exhibit “B”

Laboratory’s Rates

EXHIBIT "C"
HIDALGO COUNTY, TEXAS
Agreement #C-17-000-00-00 Work Authorization Form

WORK AUTHORIZATION NO. ___

THIS WORK AUTHORIZATION is made pursuant to and in accordance with the terms and conditions of the Agreement between Hidalgo County, Texas ("County" or "Owner") and Terracon Consultants, Inc., a Delaware Corporation ("Laboratory"). dated ____ ("Agreement") for the Hidalgo County Courthouse Project ("Project").

PART 1. WORK DESCRIPTION

The purpose of this Work Authorization is for the Laboratory to provide under the Agreement Services, generally described as follows:

The specific scope of services to be provided by the Laboratory is identified in Work Authorization **EXHIBIT "A" - Scope of Services by the Laboratory** contained within Laboratory's Proposal dated July 23, 2018 attached hereto ("Services").

PART 2. PRICE

The lump sum price for all Services under this Work Authorization is \$ _____ ("Price"). This amount is based upon the lump sum price in the Proposal attached hereto **EXHIBIT "C" - Proposal** and includes any and all costs and expenses necessary to completely, properly and timely provide all Services of this Work Authorization.

PART 3. PAYMENT

Payment to the Laboratory for the Services established under this Work Authorization that have been completely, properly and timely provided shall be made in accordance with the terms of the Agreement and any specific additional payment terms in the Proposal to which the Owner agrees.

PART 4. FUNDING

This Work Authorization No. _____ shall be funded through funding source:

Account No. _____

Requisition Number _____ (MUST BE INCLUDED AFTER CC APPROVAL)

PART 5. PERIOD OF SERVICE

The Services shall be provided according to Work Authorization **EXHIBIT "B" - Work Schedule**. This Work Authorization shall become effective on the date of final acceptance of the parties hereto, and terminate upon the proper completion of the Services, unless the Services are terminated earlier by the County made with or without cause.

PART 6. RESPONSIBILITIES AND OBLIGATIONS

Laboratory shall be responsible for completely, properly and timely providing all Services. This Work Authorization and the Services are subject to all applicable terms and conditions of the Agreement. This Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

PART 7. ACKNOWLEDGEMENT AND CONFIRMATION

The Program Manager for the Project has reviewed and recommends approval of this Work Authorization.

BY: _____

For: Jacobs Project Management Co. (Program Manager)

PART 8. LIMITATIONS, ACCEPTANCE AND APPROVAL

This Work Authorization is hereby accepted and approved by Hidalgo County, Texas:

- a) Approval for Price of \$50,000.00 or less: by Owner's Designated Representatives Valde Guerra, Michael Leo and Sergio Cruz when acting jointly and unanimously on behalf of the Owner with respect to this Work Authorization or any such other County employee that the County shall designate with prior notice to the Laboratory; or
- b) Approval for Price greater than \$50,000.00: by Commissioners' Court on _____ as indicated below by signature of County Judge.

[Signature page follows.]

Effective Date: _____

THE LABORATORY:
Terracon Consultants, Inc.

THE OWNER:
Hidalgo County, Texas
(\$50,000.00 or less)

By:

By: Valde Guerra

By: Michael Leo

By: Sergio Cruz

ATTEST:

THE OWNER:
Hidalgo County, Texas
(more than \$50,000.00)

By: Arturo Guajardo, Jr., County Clerk

By: Ramon Garcia, County Judge

LIST OF ATTACHMENTS

Work Authorization EXHIBIT "A" -
Work Authorization EXHIBIT "B" -
Work Authorization EXHIBIT "C" -

Scope of Services by Laboratory under this Work Authorization
Work Schedule
Proposal

EXHIBIT "D"

Amendment Form

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

AMENDMENT NO. _____

This Amendment is made pursuant to and in accordance with the terms and conditions of the Agreement between Hidalgo County, Texas ("County" or "Owner") and Terracon Consultants, Inc., a Delaware Corporation ("Laboratory") dated _____ ("**Agreement**") and/or any specified Work Authorization(s) for the Hidalgo County Courthouse Project ("Project").

WITNESSETH

WHEREAS, the County and Laboratory intend to amend the Agreement and/or the specified Work Authorization(s) as provided by this Amendment.

NOW THEREFORE, premises considered, the County and the Laboratory agree to the following amendment(s):

The Agreement is amended as follows:

Work Authorization ___ is or Work Authorizations ___ are amended as follows:

All other provisions of the Agreement and/or the specified Work Authorization(s) are unchanged and remain in full force and effect.

In the event this Amendment increases compensation to be paid to the Laboratory, the increase shall be funded through funding source:

Account No. _____

Requisition Number _____ (**MUST BE INCLUDED AFTER CC APPROVAL**)

LIMITATIONS, ACCEPTANCE AND APPROVAL

This Amendment is hereby accepted and approved by Hidalgo County, Texas:

- a) Approval that includes any Price modification of \$50,000.00 or less: by Owner’s Designated Representatives Valde Guerra, Michael Leo and Sergio Cruz when acting jointly and unanimously on behalf of the County with respect to this Amendment or any such other County employee that the County shall designate with prior notice to the Laboratory; or
- b) Approval that includes any Price modification of greater than \$50,000.00: by Commissioners’ Court on _____ as indicated below by signature of County Judge.

[Signature page follows.]

Effective Date: _____

THE LABORATORY:
Terracon Consultants, Inc.

THE OWNER:
Hidalgo County, Texas
(\$50,000.00 or less)

By:

By: Valde Guerra

By: Michael Leo

By: Sergio Cruz

ATTEST:

THE OWNER:
Hidalgo County, Texas
(more than \$50,000.00)

By: Arturo Guajardo, Jr., County Clerk

By: Ramon Garcia, County Judge

LIST ANY OF ATTACHMENTS

Exhibit “E”

Insurance Requirements

Exhibit E.

County of Hidalgo Insurance Requirements of Construction Materials Testing Laboratory

1. **Insurance Coverage To Be Provided By Laboratory.** This Exhibit (the “Insurance Requirements”) is attached as an Exhibit as part of the Agreement between County of Hidalgo, Texas (“Owner”) and Construction Materials Testing Laboratory (“Laboratory”). In the event of a direct conflict between any of the following Insurance Requirements and any provision in the Agreement, these Insurance Requirements control, amend and supplement the conflicting provision. Subject to review and revision by the Owner from time to time, in the Owner’s good faith judgment, the following insurance shall be maintained by Laboratory with coverage and limits of not less than those set forth below at all times during the term of the Agreement and thereafter as required.

No.	Specifications	Coverages, Limits and Other Requirements
A. LIABILITY		
1.	Commercial General Liability.	Laboratory is to maintain commercial general liability (“CGL”) insurance and, if necessary, commercial excess insurance, issued on an Occurrence Basis meeting at least the following specifications.
1.1	Minimum Limits	The limits of coverage shall not be less than the following amounts: \$10,000,000 Per Occurrence \$10,000,000 General Aggregate \$10,000,000 Products and Completed Operations Aggregate \$10,000,000 Personal and Advertising Injury
1.2	General Aggregate	A Designated Construction Project(s) General Aggregate Limit shall be provided on ISO form CG 25 03 05 09.
1.3	Form	This insurance is to be issued on the most recent reasonably available and unmodified ISO form CG 00 01 or equivalent, and shall cover liability arising from premises, ongoing and completed operations.
1.4	Insured Contracts	Coverage shall include but not be limited to liability assumed by Laboratory under the Agreement, including the tort liability of another assumed in a business contract, and shall include unmodified Separation of Insureds coverage.
1.5	Additional Insureds	Additional Insured status shall be provided in favor of Owner Parties on ISO form CG 20 10 10 01 to the extent permitted by law.
1.6	Personal Injury Contractual Liability	The personal injury contractual liability exclusion shall be deleted.
1.7	Primary and Noncontributory	This insurance shall be endorsed to provide primary and noncontributing liability coverage by ISO CG 20 01 04 13. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner, with Owner Parties’ insurance being excess, secondary and noncontributing.
1.8	Waiver of Right of Recovery and Subrogation	Laboratory agrees to waive it rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties on ISO form CG 24 04 05 09.
1.9	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
1.8	Prohibited Exclusions or Limitations	Prohibited exclusions/limitations or their equivalents include but are not limited to: a. Amendment of Insured Contract Definition ISO CG 24 26; b. Any endorsement modifying the Employer’s Liability exclusion; c. Classification or Business Description; d. Contractual Liability Limitation ISO CG 21 39; e. “Insured vs. Insured” except Named Insured vs. Named Insured; f. Known, Continuous or Progressive Injury or Damage; g. Limitation of Coverage to Designated Premises or Project ISO CG 21 44; h. Punitive, Exemplary or Multiplied Damages (Where Permitted By Law is acceptable); i. Any other exclusion or limitation reasonably unacceptable to Owner.
2.0	Business Auto Liability.	Laboratory is to maintain business auto insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.
2.1	Minimum Limits	The limits of liability shall be no less than \$1,000,000 per accident.
2.2	Form	This insurance is to be issued on the current edition of the ISO CA 00 01
2.3	Scope	This insurance is to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of any auto, including owned, hired and non-owned

		autos.
2.4	Additional Insureds	Additional Insured status shall be provided in favor of Owner Parties on ISO form CA 20 48 10 13.
2.5	Waiver of Right of Recovery and Subrogation	Laboratory agrees to waive it rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties on ISO form CA 04 44 10 13.
2.6	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to the Owner.
3.0	<u>Workers' Compensation and Employer's Liability.</u> Laboratory is to maintain workers' compensation and employer's liability insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.	
3.1	Workers' Compensation Limits	The minimum limits of this insurance shall be no less than the statutory limits.
3.2	Employer's Liability Limits	The minimum limits of this insurance shall be no less than \$10,000,000 each accident and disease.
3.3	Territory	The state in which the Services are to be performed must be listed under Item 3.A. on the Information Page of the policy.
3.4	Scope	This insurance is to cover liability arising out the Laboratory's employment of workers and anyone for whom the Laboratory may be liable for workers' compensation claims. Worker's compensation insurance is required and no "alternative" form of insurance is permitted.
3.5	United States Longshoremen and Harbor Workers ("USL&H")	USL&H coverage must be provided where such exposure exists listing the state(s) in which Services are to be performed.
3.6	Waiver of Right of Recovery and Subrogation	To the extent permitted by law, Laboratory agrees to waive it rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties on form WC 42 03 04.
3.7	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
4.0	<u>Excess Liability.</u> If any of the required coverages are to be maintained by and through excess liability insurance, Laboratory is to maintain excess liability insurance meeting at least the following specifications.	
4.1	Scope	This insurance shall follow form of the underlying coverages. It shall be excess over and be no less broad than all coverages and conditions described above, including but not limited to the required additional insured status, designated construction project(s) and/or location(s) general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations, and will be primary to and not seek contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner Parties.
4.2	Limits of Liability	The policy limits required herein may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
4.2	Concurrency	Such coverage shall have the same inception date as the commercial general liability and employer's liability coverages.
4.3	Drop Down Coverage	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.
4.4	Defense Costs	This insurance is to include a duty to defend any insured.
5.0	<u>Professional Liability.</u> Laboratory is to maintain Professional Liability insurance meeting at least the following specifications.	
5.1	Minimum Limits	Limits of coverage for Laboratory shall be no less than: \$5,000,000 each claim \$5,000,000 annual aggregate All of Laboratory's consultants that provide professional services shall also carry professional liability insurance in amounts and types to be approved by Owner.
5.2	Scope	Such insurance shall cover all services rendered by the Laboratory and vicarious liability arising out its engagement of consultants of any tier under the Agreement, including but not limited to program management services.
5.3	Retroactive Date	Any retroactive date must be effective prior to beginning of services for the Owner.
5.4	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: a. bodily injury or property damage where coverage is provided on behalf of Laboratory; b. habitational or residential operations; c. mold and/or microbial matter and/or fungus and/or biological substance; or d. punitive, exemplary or multiplied damages (Where Permitted By Law is acceptable)

		A professional liability endorsement to a general liability policy is not acceptable.
5.5	Term	Policies written on a Claims-Made basis shall be maintained for at least four years beyond substantial completion of the Project improvements. The purchase of an extended discovery period or an extended reporting period on a Claims-Made policy will not be sufficient to meet the terms of this provision.
5.6	Waiver of Right of Recovery and Subrogation	Laboratory agrees to waive it rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties.
5.7	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
6.0	Pollution Liability. Laboratory <input checked="" type="checkbox"/> is <input type="checkbox"/> is not required to maintain Pollution Liability insurance meeting at least the following specifications.	
6.1	Minimum Limits	Limits of coverage shall be no less than: \$2,000,000 each claim \$4,000,000 annual aggregate
6.2	Scope	The policy must provide coverage for: a. the full scope of the named insured's operations (on-going and completed) as described within the scope of Services under the Agreement b. loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall c. third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; d. diminution of value and Natural Resources damages e. contractual liability f. claims arising from owned and non-owned disposal sites utilized in the performance of the Agreement. Coverage extensions to the General Liability insurance policy without a separate insurance agreement for Pollution Liability insurance will not fulfill this requirement
6.3	Additional Insured Status	The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.
6.4	Insured Contracts	Coverage shall include but not be limited to liability assumed by Laboratory under the Agreement, including the tort liability of another assumed in a business contract.
6.5	Primary and Noncontributory Coverage	This insurance shall be endorsed to provide primary and noncontributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and noncontributing.
6.6	Waiver of Right of Recovery and Subrogation	Laboratory agrees to waive it rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties.
6.7	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
6.8	Retroactive Date	If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of the Agreement or the commencement of Laboratory services relation to the Services.
6.9	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: a. Insured vs. Insured actions. However exclusion for claims made between insured within the same economic family are acceptable; b. Impaired Property That Has Not Been Physically Injured; c. Materials Supplied or Handled By The Named Insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval; d. Property Damage To The Work caused by the Laboratory; e. Faulty Workmanship as it relates to clean up costs; f. Punitive, Exemplary or Multiplied Damages (Where Permitted By Law by acceptable); g. Services performed by Consultants; and h. Contractual Liability incurred as a result of an injury to an employee of the insured.
6.10	Term	Completed operations coverage shall be maintained for a minimum of seven (7) years after the substantial completion of Services. The extended reporting period on a claims-made based policy does not fulfill this requirement.

2. General Insurance Requirements.

.1 Definitions. For purposes of the Agreement:

- a. "Agreement" means the Agreement between Owner and Laboratory to which this Exhibit is attached.
- b. "ISO" means Insurance Services Office.
- c. "Laboratory" means the firm selected with which the Owner enters the Agreement and shall include consultants of any tier of any tier and any other person or entity performing Services by, through, or under Laboratory.
- d. "Owner Parties" shall have the same meaning as defined in the Agreement.
- e. "Services" means all services provide by, through or under Laboratory under the Agreement or otherwise for the Project.

.2 Limits. "Limits" set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If Laboratory maintains greater limits, than these specifications, it shall not limit the amount of recovery available to Owner Parties and the limits specified above as the minimum limits are increased to the greater limits.

.3 Policies. All policies held by Laboratory and required herein must be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Services are to be performed.

.4 Waiver. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

.5 Deductibles and Retentions. No deductible or self-insured retention shall exceed \$100,000 without prior written approval of the Owner. If Laboratory elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$100,000.00, Owner Parties and Laboratory shall maintain all rights and obligations between themselves as if Laboratory maintained the insurance with a commercial insurer including but not limited to Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required herein. Laboratory shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Laboratory had maintained the insurance pursuant to this Exhibit. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Laboratory's sole risk. The Laboratory shall not be reimbursed for same.

.6 Forms. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

.7 Evidence of Insurance. Laboratory is to provide Owner with evidence of insurance prior to entry by Laboratory on the property and thereafter is to provide Owner refreshed evidence of continued insurance after the expiration of the current policies prior to the expiration of the current policies. Insurance must be evidenced on an ACORD Form 25 Certificate of Liability Insurance for liability coverages which shall specify:

- a. Owner as certificate holder at Owner's mailing address;
- b. Insured's name, which must match that on the Agreement;
- c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
- d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
- e. Additional Insured status in favor of Owner Parties on forms required herein on General Liability, Auto Liability, Excess Liability and, when required herein, Pollution Liability;
- f. Designated Construction Project(s) General Aggregate Limit on General Liability and Excess Liability;
- g. Personal Injury Contractual Liability on General Liability and Excess Liability;
- h. Primary and non-contributory status on General Liability, Excess Liability and Pollution Liability;
- i. Pollution Liability;
- j. Professional Liability;
- k. Waivers of subrogation on all coverages;
- l. Amount of any deductible or self-insured retention in excess of \$100,000;
- m. 30 Day Notice of Cancellation on all coverages;
- n. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- o. Copies of the following shall also be provided:
 - 1) General Liability Additional Insured endorsement(s);
 - 2) General Liability Schedule of Forms and Endorsements page(s); and
 - 3) 30 Day Notice of Cancellation endorsement applicable to all required policies.

If requested in writing by Owner, Laboratory will provide to Owner access for inspection of a certified copy of any or all insurance policies required herein including endorsements within ten (10) days of any such request.

Commencement of Services without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of the Agreement or this Exhibit, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Laboratory or any consultants of any tier from performing any Services until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

.8 Insurance Requirements of Laboratory's Consultants

- a. Insurance similar to that required of the Laboratory shall be provided by all consultants of any tier (or provided by the Laboratory on behalf of consultants of any tier) to cover operations performed under any subcontract agreement. The Laboratory shall be held responsible for any modification in these insurance requirements as they apply to consultants of any tier. The Laboratory shall maintain certificates of

insurance from all consultants of any tier containing provisions similar to those listed herein (modified to recognize that the certificate is from the consultant) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.

- b. The Laboratory is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Laboratory's or its consultants' of any tier property shall be the Laboratory's and its consultants' of any tier sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Laboratory and its consultants of any tier shall not be reimbursed for same. Should the Laboratory or its consultants of any tier choose to self-insure this risk, it is expressly agreed that the Laboratory hereby waives, and shall cause its consultants of any tier to waive, any claim for damage or loss to said property in favor of the Owner Parties.

3. **Miscellaneous**

- .1 **Release and Waiver.** The Laboratory hereby waives all rights of recovery and releases, and shall cause its consultants of any tier to release, the Owner Parties from any and all claims or causes of action whatsoever which the Laboratory and/or its consultants of any tier might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Laboratory and/or its consultants of any tier pursuant to the Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**
- .2 **No Waiver.** Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Laboratory's obligation to maintain such insurance.
- .3 **Suspension.** Owner shall have the right, but not the obligation, of suspending Laboratory's authority to perform Services, without an increase in the sum payable by Owner to Laboratory due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.
- .4 **Post Completion Coverage.** With respect to the insurance to be maintained after final payment to Laboratory, an additional certificate(s) evidencing such coverage shall be provided to Owner with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.
- .5 **Compliance With Laws.** If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Owner Parties as allowed under the law.
- .6 **Use of the Owner's Equipment.** The Laboratory, its agents, employees, consultants, or suppliers shall use the Owners equipment only with express written permission of the Owner designated representative and in accordance with the Owners terms and condition for such use. If the Laboratory or any of its agents, employees, consultants, or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Laboratory shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use. **THE FOREGOING INDEMNITY APPLIES EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**
- .7 **Laboratory Insurance Representations to Owner Parties**
 - a. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Laboratory's indemnity obligations as contained in the Agreement nor represent in any manner a determination of the insurance coverages the Laboratory should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Laboratory in support of the Laboratory's liability and indemnity obligations under the Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Laboratory, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of the Agreement.
 - b. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, the Agreement. If the Laboratory shall fail to remedy such breach within five (5) business days after notice by the Owner, the Laboratory will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Laboratory by the Owner. In the event of any failure by the Laboratory to comply with the provisions of the Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Laboratory, purchase such insurance, at the Laboratory's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Laboratory shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- .8 **Survival.** This Exhibit is an independent contract provision and shall survive the completion of the Services or termination or expiration of the Agreement.