

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

**CONTRACT FOR
AIR MONITOR MAINTENANCE PROGRAM SERVICES
FOR WILLIAMSON COUNTY
(CAPCOG GRANT FUNDS)**

THIS CONTRACT is made and entered into by and between **Williamson County, Texas** (hereinafter “The County”), a political subdivision of the State of Texas, acting herein by and through its governing body, and FarrWest Environmental Supply, Inc. (hereinafter referred to as “Contractor”) to provide Air Monitor Maintenance Services paid for from Capital Area Council of Government (“CAPCOG”) grant funds. The parties expressly agree to the following terms:

I.

Services to be provided: The County agrees to employ and does hereby employ Contractor as independent contractor, to provide services pertaining to maintenance of The County’s air monitor equipment. The services include, but are not limited to the following items:

Williamson County Equipment to be Maintained:

- a) 4 x MultiRAE (HR PID/LEL/O2/CO+H2S sensors), wireless;
- b) 2 x MultiRAE Plus (10.6eV PID/LEL/O2/CO/H2S or Cl2 sensors);
- c) 2 x MiniRAE 2000 PID, 10.6eV;
- d) 2 x QRAE Plus (CO/H2S/LEL/O2);
- e) 4 x RAE Link 3 Mesh modems;
- f) 4 x AreaRAE monitors (PID/LEL/O2/CO/H2S or Cl2);
- g) 2 x SensorRAE stations containing HCN/ Cl2 sensors; and
- h) 2 x RAE Systems AutoRAE 2 Calibration stations

FarrWest- Provided Equipment and Supplies:

- i) 2 x 66L 4-gas calibration gas for bump testing, per year;
- j) 2 x 66L Isobutylene calibration gas for bump testing, per year;
- k) Sampling tubing, as needed;
- l) 90 day on-site service and calibration;
- m) Special Event monitoring support, as needed; and
- n) Annual gas monitoring and equipment training class for all 3 shifts

Service and Maintenance responsibilities: “Performance Standards”:

- (a) Every **90 days** FarrWest will come on-site to each hazmat location to inspect, clean, maintain and calibrate the instrumentation outlined above. The monitors will be serviced in preparation for the next **90 day** service cycle;
- (b) FarrWest will maintain all service records and provide a copy of those records to WILLIAMSON COUNTY HAZMAT. Farrwest will also provide a log-in to our server in order to obtain copies of calibration and repair documents;
- (c) FarrWest will be responsible for any and all sensor replacement, should a sensor fail to calibrate, *including* exotic sensors (i.e., HCN or any sensor that doesn’t have a 2 year warranty);
- (d) FarrWest will perform repairs for damage or failure occurring during *normal usage of equipment*. All associated costs, parts and labor with these repairs will be the responsibility of FarrWest. If total loss or complete destruction of unit is determined, the unit can be replaced at a discounted cost through Farrwest; and
- (e) FarrWest will provide loaner units, within 12hrs of notice, in the event of unit failure between service intervals. Farrwest also will provide 24/7/365 phone support for equipment or technical problems with a 1-hour response and solution time. Any equipment taken from location will be returned promptly once repaired.

FarrWest will maintain that it is a factory authorized service facility and will maintain RAE Systems Advanced certified technicians on staff at all times. Farrwest will also maintain a Pro-Board Certified Hazmat technician on staff for any technical questions.

II.

Project Start Date, Term, & Renewal Options: The start date for services shall be as allowed by The County at its sole discretion. Contractor shall provide for expeditious and practicable execution of the work.¹ The initial term of this agreement shall be for one year starting on the effective date of this contract. The County may extend this contract with three (3) renewal options of one (1) year each at the same annual price as set forth in Paragraph XI.

III.

Incorporated Documents: All representations and proposals made in Contractor’s representations made to either CAPCOG or The County on this project are incorporated herein and adopted as if copied in full. Where any terms or conditions are found to be in conflict with this contract, the terms that will prevail will be at the sole discretion of The Williamson County Commissioners Court.

¹ Any Change Orders must be approved by the Williamson County Commissioners Court prior to any changes being made.

IV.

On-Site Representative For Work Monitoring: The County may appoint an on-site project representative to observe the work being performed. The County may conduct inspections to determine the date or dates of substantial completion and the date of final completion. If The County so desires, it may seek written adequate assurance that the work is progressing on-time and pursuant to terms and conditions of this agreement and all related contract documents.

V.

Labor, Materials, Tools, & Misc. Items: Contractor shall provide or cause to be provided and shall pay for labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work. Contractor shall enforce strict discipline and good order among their respective employees and other persons carrying out the contract. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

VI.

Compliance With All Laws: Contractor agrees, in connection with the services or any related items to the subject matter of this contract, to comply with any and all local, state or federal requirements, including but not limited to compliance with regulations of the Texas Commission on Environmental Quality and the Occupational Safety and Health Administration. Additionally, Contractor shall obtain from the appropriate City, Williamson County, or State of Texas the necessary permit(s) required by the ordinances of the City of Georgetown, Williamson County, or State of Texas, for performance of the work.

VII.

Duty To Report Problems: Contractor agrees to advise The County and its representative(s) of errors, mistakes, potential problems or any other problematic issue(s) coming under observation during the progress of the work and will make good faith efforts to correct any errors that come to light in a timely and reasonable manner.

VIII.

Cleaning Up: Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this contract. At completion of the work, Contractor shall remove from and about the project: waste

materials, rubbish, tools, construction equipment, machinery and surplus materials. If Contractor fail to clean up as provided, the cost thereof shall be charged to Contractor by deducting from final fee or as necessary.

IX.

No Agency Relationship & Indemnification: It is understood and agreed that Contractor shall not in any sense be considered a partner or joint venturer with The County, nor shall Contractor in any manner hold itself out as an agent or official representative of The County. Contractor shall be considered an independent contractor for the purpose of this agreement and shall in no manner incur any expense or liability on behalf of The County other than what may be expressly allowed under this agreement. The County will not be liable for any loss, cost, expense or damage, whether indirect, incidental, punitive, exemplary, consequential of any kind whatsoever for any acts by Contractor or failure to act relating to the construction services being provided. Contractor agrees to indemnify, hold harmless, and defend The County against any claim, demand, loss, injury, damages, action, or liability of any kind against The County resulting from any services Contractor performs on behalf of The County.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, REPRESENTATIVES OF THE OWNER AND THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, ITS VARIOUS DEPARTMENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS IN RELATION TO CONTRACTOR'S PERFORMANCE OF THE WORK DESCRIBED HEREIN. DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE, EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW. THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER.

X.

Contractor's Employees: Contractor covenants and agrees that all personnel engaged shall be employees of the Contractor, and Contractor shall pay all salaries, and all Social Security taxes, Federal and State Unemployment Insurance, Worker's Compensation Insurance and any similar taxes or expenses related to such employees, including, but not limited to, license fees, insurance premiums and outfitting expenses. Contractor shall be responsible for complying with all Federal, State and Local laws, ordinances and regulations regarding its employees, including all Occupational Safety and Health Administration regulations. Contractor shall be responsible for the supervision, control and direction of the day-to-day activities of the personnel provided hereunder and shall provide close supervision on a continual basis.

XI.

Payment: The County agrees to pay Contractor a lump sum from available grant funding designated for this project. The total annual amount for a twelve-month period upon commencement of this contract will be \$6,980.00, which shall be paid from available grant funds within thirty (30) days that this contract becomes effective. Additionally, pursuant to State law, the payment terms are governed as follows:

County's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date County receives the goods/services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

In the event that an error appears in an invoice submitted by Contractor, County shall notify Contractor of the error not later than the twenty first (21st) day after the date County receives the invoice. If the error is resolved in favor of Contractor, Contractor shall be entitled to receive interest on the unpaid balance of the invoice submitted by Contractor beginning on the date that the payment for the invoice became overdue. If the error is resolved in favor of the County, Contractor shall submit a corrected invoice that must be paid in accordance within the time set forth above. The unpaid balance accrues interest as provided by Chapter 2251 of the Texas Government Code if the corrected invoice is not paid by the appropriate date.

As a minimum, invoices shall include:

- a) Name, address, and telephone number of Contractor and similar information in the event the payment is to be made to a different address
- b) County contract, Purchase Order, and/or delivery order number
- c) Identification of items or service as outlined in the Contract
- d) Quantity or quantities, applicable unit prices, total prices, and total amount
- e) Any additional payment information which may be called for by the Contract

Payment inquiries should be directed to the Williamson County Auditor's Office, Accounts Payable Department: accountspayable@wilco.org, 512-943-1500

XII.

The County's Decision To Withhold Payment: The County may withhold a payment in whole or in part to the extent reasonably necessary to protect The County due to The County's determination that the work has not progressed to the point indicated in the contract documents or that the quality of work is not in accordance with the contract documents. The County may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of any request for payment to such extent as may be necessary to protect The County from loss for which either of Contractor is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to The County;
- .3 failure of Contractor to make payments properly to contractors or for services, labor, materials or equipment;
- .4 reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum;
- .5 damage to The County;
- .6 reasonable evidence that the work will not be completed within the contract time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the work in accordance with the contract documents.

XIII.

No Waiver of Immunities: Nothing herein shall be deemed to waive, modify or amend any legal defense available at law or in equity to Williamson County, its past or

present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Williamson County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

XIV.

Warranty: Contractor warrants to The County that materials and equipment furnished under this agreement will be of good quality and new unless otherwise required or permitted by The County, that the work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the work will conform to the requirements of the contract documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

XV.

Taxes: Contractor shall pay all sales, consumer, use and similar taxes for the work provided by Contractor which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

XVI.

Venue and Applicable Law: Venue of this contract shall be Williamson County, Texas, and the laws of the State of Texas shall govern all terms and conditions.

XVII.

No Assignment and Obtaining Third-Party Approval(s) and Indemnifications: Contractor may not assign this contract. Any subcontractors must be approved by The County and Contractor has a duty to have any subcontractor sign an indemnification agreement to protect The County.

XVIII.

Severability: In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision in this agreement and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

IXX.

Confidentiality: Contractor expressly agrees that they will not use any incidental confidential information they may obtain while being on governmental property for their own benefit, and agrees that it will not enter unauthorized areas or access confidential information and will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times.

XX.

Termination: This agreement may be terminated at any time at the option of The County, without future or prospective liability for performance upon giving upon thirty (30) calendar day's written notice to thereof. In the event Williamson County exercises its right to terminate without cause, it is understood and agreed that only the amounts due to the Contractor for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Williamson County's termination for convenience.

XXI.

Reimbursement of Funds. Despite the agreed upon method of payment set forth above, Contractor agrees to return to The County pro-rat portion of unearned funds distributed to Contractor if (a.) Contractor's project progress is insufficient; (b.) this contract is terminated for any reason; or (c.) Contractor fails in any other respect under this contract.

XXII.

Right to Audit: Contractor further agrees that The County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Contractor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor expressly agrees that The County shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Additionally, The County shall give Contractor reasonable advance notice of intended audits.

XXIII.

Notice. Any notice required to be given under the terms of this CONTRACT shall be effective if and when given in writing and mailed by certified mail to the addresses listed below or subsequently provided in writing:

WILLIAMSON COUNTY:
WILLIAMSON COUNTY JUDGE
710 MAIN STREET, SUITE 101
GEORGETOWN, TEXAS 78626

Contractor:
FARRWEST ENVIRONMENTAL SUPPLY, INC.
108 COMMERCIAL PLACE, SUITE 200
SCHERTZ, TEXAS 78154

GENERAL COUNSEL:
GENERAL COUNSEL
OFFICE OF WILLIAMSON COUNTY JUDGE
710 MAIN STREET, SUITE 200
GEORGETOWN, TEXAS 78626

XXIV.

Mediation. The parties agree to use non-binding mediation for dispute resolution prior to and formal legal action being taken on this contract.

XXV.

Signature For The County: The presiding officer of The County's governing body who is authorized to execute this instrument by order duly recorded may execute this contract on behalf of The County.

WITNESS the signatures of all parties in duplicate originals this the _____ day of _____, 2014.

THE COUNTY OF WILLIAMSON:

County Judge

CONTRACTOR:

Authorized Signature

SUBSCRIBED AND SWORN TO BEFORE ME by _____
AS AUTHORIZED AGENT OF CONTRACTOR on this the _____ day of _____,
2014.

Notary Public in and for the
State of Texas