



2014

# Williamson County

## INVITATION FOR BID

**Central Texas Treatment Center Water Line Replacement**

**Bid # 14IFB00244**

***Williamson County Purchasing  
Department  
901 S. Austin Avenue  
Georgetown, TX. 78626  
[www.wilco.org/Purchasing](http://www.wilco.org/Purchasing)  
512-943-3553***

Submission Deadline: Wednesday, September 10, 2014 at 2:00 PM



**New 2-Step Bid Process**

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### **Important Information:**

This is a two (2) step bid process.

**Step 1** - contains information relative to the only submission you are required to make by the deadline:

Wednesday September 10, 2014 at 2:00 PM

**Step 2** – contains the following information:

- Standard Terms and Conditions
- General Instructions
- Bid Format
- Important Schedules that will be required to be submitted in Step 2. This information may be required from you if the bid we receive from you in Step 1 is the “apparent” lowest and best bid submitted.

Please be aware that **BOTH** Steps 1 and 2 contain **IMPORTANT** information that is an integral part of this IFB and will be a part of any resulting agreement.

# STEP 1

Step 1 allows us to gather the bid information necessary to determine who has submitted the 'apparent' lowest bid. It includes:

- the Signed and Completed Bid Form (Price Sheet – Schedule “A”)
- required documents and information listed in the bid package in Schedule “C”
- Submitted to:
  - the designated location
  - by the designated deadline

Be sure and read the technical specifications closely prior to submitting your offer to the county. These technical specifications are found in Schedule “B” of this IFB.

That's it – you will have completed the initial step of the bidding process.



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**INVITATION FOR BIDS (IFB)**  
**-Public Announcement and General Information-**

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**Williamson County Central Texas Treatment Center**  
**Water Line Repairs**

**Bid # 14IFB00244**

**BIDS MUST BE RECEIVED ON OR BEFORE:**  
**September 10, 2014 at 2:00 PM**

**BIDS WILL BE PUBLICLY OPENED:**  
**September 10, 2014 at 2:00 PM**

**MANDATORY PRE-BID**

**August 26, 2014 at 2:00 PM at the**  
**Williamson County Central Texas Treatment Center**  
**601 N. Alligator Road, Granger, Texas**

Williamson County is seeking qualified companies to replace domestic water lines at the Williamson County Central Texas Treatment Center in Granger, Texas. The estimated time of final completion is one-hundred-and-sixty (160) days at an approximate cost of \$140,000.

**BID SUBMISSION**

Notice is hereby given that sealed Bids will be accepted by the Williamson County Purchasing Department for Bid # 14IFB00244, CTTC Water Line Repairs. Specifications for this Bid may be obtained from <http://wilco-online.org/eBids/Bids.aspx>.

Bids are to be addressed to the Williamson County Purchasing Agent, 901 South Austin Avenue, Georgetown, TX 78626, with the Bid number and Bid name marked on the outside of the envelope. Bidders should forward one (1) original, and two (2) copies of their Bid to the address shown below. Late Bids will be rejected as non-responsive. Bids will be publicly opened in the Williamson County Purchasing Department at the time and date indicated above. Bidders are invited to attend the sealed Bid opening.

<b>BID NAME:</b>	<b>CTTC Water Line Repair</b>
<b>BID NO:</b>	<b>Bid # 14IFB00244</b>
<b>DUE DATE/TIME:</b>	<b>Wednesday, <u>September 10 at 2:00 PM</u></b>
<b>MAIL OR DELIVER TO:</b>	<b>Williamson County Purchasing Department</b>
	<b>Attn: CTTC Water Line Repair # 14IFB00244</b>
	<b>901 South Austin Avenue</b>
	<b>Georgetown, TX 78626</b>

**All Respondents interested in submitting a BID MUST attend the Mandatory Pre-bid Conference on August 26, 2014 at 2:00 PM at the Williamson County Central Treatment Center, 601 N. Alligator, Granger, TX.**

Any questions, clarifications or requests for general information should be directed to the contact listed below:

Assistant Purchasing Agent  
Attn: CTTC Waterline 14IFB00244  
901 South Austin Avenue  
Georgetown, TX 78626  
[purchase@wilco.org](mailto:purchase@wilco.org)

**Questions must be submitted via email, and are due by 5PM CST on September 2, 2014.** Every effort will be made to answer questions within 24 hours of receiving them, with an email response.

All submitted questions with their answers will be posted and updated on a daily basis to the Williamson County portal, <http://wilco-online.org/eBids/Bids.aspx>

It is the Bidder's responsibility to check with Williamson County's Purchasing Department prior to submitting your Bid to ensure that you have a complete, up-to-date package. The Williamson County Purchasing Department takes no responsibility to ensure any interested Bidder has obtained any outstanding addenda or additional information. Any addenda and/or other information relevant to the IFB will be posted on the Williamson County vendor portal at the following link:  
<http://wilco-online.org/eBids/Bids.aspx>

All interested Bidders are invited to submit a Bid in accordance with the Instructions and General Requirements, Bid Format, Bid Specifications, and Definitions, Terms and Conditions stated in this IFB. The items listed below are an important part of this Bid:

- Bidders are strongly encouraged to carefully read the entire IFB.
- Williamson County will NOT be responsible for unmarked or improperly marked envelopes.
- All Bids must be received in the Williamson County Purchasing Department before the opening, which will be on the date and at the time set forth in the 'Public Announcement and General Information' provided above. Bids received after the submittal deadline will be considered void and unacceptable and returned to the Bidder unopened. Williamson County is not responsible for lateness or non-delivery of mail, carrier, etc. The date and time stamp of the Williamson County Purchasing Department shall be the official date and time of receipt.
- Facsimile transmittals will NOT be accepted.
- Contract Administration

**Dwayne Gossett, Project Coordinator**, Williamson County Facilities (or successor) at 3101 SE Inner loop Georgetown, TX., shall serve as Williamson County's Contract Administrator with designated responsibility to ensure compliance with the requirements of the Contract and any ensuing Agreement, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator will serve as liaison between the Williamson County Commissioners Court and the Successful Bidder.

The **Bidder's Bid, and all IFB requirements** listed as 'Mandatory' **will need to be submitted in accordance with Schedule "C" of this IFB package.** Failure to fully complete and return required forms/affidavits/documents required by this IFB in accordance with the information provided in Schedule "C" may, at Williamson County's sole discretion, render your Bid null and void.

**HOURS FOR THE WILLIAMSON COUNTY PURCHASING DEPARTMENT ARE 8:00 AM – 12:00 PM AND 1:00 PM – 5:00 PM CENTRAL TIME MONDAY – FRIDAY, EXCLUDING COUNTY HOLIDAYS. THE PURCHASING DEPARTMENT IS CLOSED DURING LUNCH FROM 12:00PM – 1:00PM.**

## **STEP 1**

**-Schedule A AND Bidders Bonds are Required to be submitted before the deadline of:**

**Wednesday, September 10, 2014 2:00**

### **SCHEDULE "A" PRICE SHEET**

**-REQUIRED AS A PART OF STEP 1-**

**WILLIAMSON COUNTY CTTC Water Line Repairs**  
**THIS FORM MUST BE COMPLETED AND RETURNED BY THE DEADLINE OF:**  
**September 10, 2014 2:00 PM**

The undersigned Bidder, having become familiar with this IFB agrees to furnish the services and/or goods in accordance with this IFB at the following prices(s).

Total Amount BID \_\_\_\_\_

WRITTEN AMOUNT

\_\_\_\_\_  
NUMERICAL AMOUNT

The undersigned hereby certifies that he or she has read the terms of this IFB and understands that this Price Sheet (Schedule "A") is a part of a complete IFB package which he or she has carefully read and understands. The undersigned acknowledges that Williamson County reserves the right to waive any informality in or to reject any or all Bids. The undersigned further agrees that this bid is valid for ninety (90) calendar days from the deadline for submittal of bid to Williamson County.

Bidder  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Contact Name (please print): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title or Representative Capacity of Signer: \_\_\_\_\_

State of Incorporation/Organization or Primary Place of Business: \_\_\_\_\_

## **Schedule “B”**

### **BID SPECIFICATIONS**

**SEE EXHIBIT A FOR BID  
SPECIFICATIONS AND PLANS**



# STEP 2

Step 2 is the Purchasing Department's administrative review process where we will gather the required documents and information from the 'apparent' lowest bidder. These are required for us to proceed to a final contract. Examples of this documentation and information would be a conflict of interest statement, insurance documents, etc.

If your offer is determined to be the 'apparent' lowest offer, then you will be contacted by a purchasing representative to provide the required documents and information. You will also be given a deadline for which to provide this additional information. If the purchasing representative does not secure the required documents and information by the given day and time your bid will be rejected and the next lowest and best bidder will be contacted to provide the same required type documents and information.

If an ensuing Agreement is required a purchasing representative will contact you to obtain the necessary Agreement. A deadline will be given for which this contract must be completed. When this document is secured the purchasing representative will place an item on the Commissioners court agenda for consideration and approval of the award.

## **Schedule “C”**

### **Special Note:**

The ‘Schedules’ listed below are an integral part of the agreement that will be formed if the Williamson County Commissioners Court accepts your Offer/Bid as the Best Value Bid submitted. These ‘Schedules’ are to be submitted in the order and timing that is provided in this Schedule (“C”) of this IFB. If you have any questions please contact the purchasing representative listed below:

Assistant Purchasing Agent  
Attn: CTTC Water Line Replacement  
[purchase@wilco.org](mailto:purchase@wilco.org)  
512-943-3553

## **ORDER AND TIMING FOR ITEMS TO BE SUBMITTED**

### Schedule for Submission:

#### **Step 1**

Mandatory items to be submitted by the designated deadline:

- Schedule "A" Price Sheet and References
- Bidder's Bond as specified in section 3.3.40

Note: All documents listed above **MUST** be submitted by the deadline: September 10, 2014 at 2:00 PM. These documents **MUST** be signed by an authorized representative of the entity submitting the bid.

#### **Step 2**

Mandatory Items to be submitted prior to recommendation for contract award. *(To be submitted by the ‘apparent’ lowest bid **only** – and when requested by the Purchasing Department)*

- Schedule "D" (Conflict of Interest Questionnaire)
- Schedule "E" (Bid Affidavit)
- Schedule “G” (Other Mandatory Documentation: Certificates of Insurance, Performance, Payment Bond, Assumed Name Certificate, and Pending or Anticipated Litigation Information)
- Schedule “H” (Ensuing Agreement/Presumptive Contract Form)



## **BID SUBMITTAL CHECKLIST**

**PLEASE READ AND COMPLETE THIS “BID SUBMITTAL CHECKLIST”. USE THIS CHECKLIST TO ASSURE THAT ALL BID REQUIREMENTS HAVE BEEN MET.**

The Bidder’s attention is especially called to the items listed below, which should be submitted in accordance with Schedule “C” of this IFB.

Failure to submit any of the documents listed in Schedule “C” when required, or failure to acknowledge any addendum in writing as required by Schedule “C”, or submitting a Bid on any condition, limitation, or provision not officially invited in this IFB may serve, at Williamson County’s sole discretion, as cause for rejection of the Bid. The County reserves the right to request that any Bidder clarify its Bid or to supply any additional material deemed necessary to assist in the evaluation of the Bid.

Bidder should check each box below indicating compliance.

### **STEP 1 ITEMS AS DESCRIBED IN SCHEDULE “C”**

#### **ITEMS TO BE SUBMITTED WITH YOUR BID BY THE DEADLINE**

- ☐ Price Sheet forms and References – Schedule “A”
- ☐ Bidder’s Bond
- ☐ **Authorized Signature** on Price Sheet forms
- ☐ Submitted by the Designated Deadline Wednesday, September 10<sup>th</sup>, 2014 at 2:00 PM
- ☐ One (1) original, two (2) copies of the Bid mailed to or delivered on or before the Bid submittal deadline, to the Williamson County Purchasing Department, 901 South Austin Avenue Georgetown, TX 78626

### **STEP 2 ITEMS AS DESCRIBED IN SCHEDULE “C”**

#### ***ADDITIONAL ITEMS THAT WILL BE REQUIRED IF YOUR BID IS DETERMINED TO BE THE APPARENT LOWEST BID SUBMITTED. THESE ITEMS WILL BE REQUIRED PRIOR TO YOUR BID BEING RECOMMENDED FOR CONTRACT AWARD***

- ☐ Conflict of Interest Disclosure Statement (Schedule “D”)
- ☐ Bid Affidavit and Acknowledgement of Addenda (Schedule “E”)
- ☐ Payment and Performance Bond
- ☐ Certificates of Insurance
- ☐ File copy of **Assumed Name Certificate** <https://deed.wilco.org/RealEstate/searchentry.aspx?cabinet=opr>  
*If Bidder is operating under an assumed business name, a file marked copy of the Assumed Name Certificate that has been filed with the Williamson County Clerk.*
- ☐ Ensuing Agreement
- ☐ Any additional documents and information that is listed in Schedule “C” of this IFB.

- FAILURE BY RESPONDENT TO INCLUDE ALL LISTED ITEMS IN ACCORDANCE WITH SCHEDULE “C” OF THIS IFB MAY, AT THE SOLE DISCRETION OF WILLIAMSON COUNTY, RESULT IN THE REJECTION OF ITS BID.
- PROVIDE ALL INFORMATION IN ACCORDANCE WITH SCHEDULE “C” OF THIS IFB TO ENSURE CONSIDERATION OF YOUR BID.

## **1.0 INSTRUCTIONS AND GENERAL REQUIREMENTS RELATED TO THIS BID**

**Read this document carefully. Follow all instructions and requirements. You are responsible for fulfilling all requirements and specifications. Be sure you have a clear understanding of this IFB.**

General requirements apply to all advertised IFBs; however, these may be superseded, in whole or in part, by the **Bid Specifications, Addenda issued as a part of this IFB and Modifications issued as a part of this IFB**. Be sure your Bid package is complete.

### **1.1 Ambiguity, Conflict, or other Errors in the IFB**

If Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in this IFB, Bidder shall immediately notify Williamson County Purchasing Department of such error in writing and request modification or clarification of the document. Modifications will be made by issuing Addenda. If the Bidder fails to notify Williamson County prior to the date and time fixed for submission of Bids of an error or ambiguity in the IFB known to Bidder, or an error or ambiguity that reasonably should have been known to Bidder, then Bidder shall be deemed to have waived the error or ambiguity or its later resolution.

Williamson County may also modify the IFB, no later than 48 hours prior to the date and time fixed for submission of Bids, by issuance of an Addendum. All addenda will be numbered consecutively, beginning with 1.

### **1.2 Notification of Most Current Address**

Bidders in receipt of this IFB shall notify the Williamson County Purchasing Department of any address changes, contact person changes, and/or telephone number changes no later than 48 hours prior to the date and time fixed for submission of Bids.

### **1.3 Bid Preparation Cost**

Cost of developing Bids is entirely the responsibility of Bidders and shall not be charged to Williamson County.

### **1.4 Signature of Bidder**

If the Bidder is a Corporation or Limited Liability Company, the legal name of the Corporation or Limited Liability Company shall be provided together with the signature of the officer or officers authorized to sign on behalf of such entity.

If the Bidder is a General Partnership, the true name of the firm shall be provided with the signature of each partner authorized to sign.

If the Bidder is a Limited Partnership, the name of the Limited Partner's General Partner shall be provided with the signature of the officer authorized to sign on behalf of the General Partner.

If the Bidder is a Sole Proprietor(s) (individual), each Sole Proprietor(s) shall sign.

If signature is by an agent, other than the Sole Proprietor(s) or an officer of a Corporation, Limited Liability Company, General Partner or a member of a General Partnership, a power of attorney or equivalent document must be submitted to the Williamson County Purchasing Department **in accordance with Schedule "C" of this IFB**.

### **1.5 Assumed Business Name**

If the Bidder operates business under an Assumed Business Name, the Bidder must have on file with the Williamson County Clerk a current Assumed Name Certificate and provide a file marked copy of same, **in accordance with Schedule "C" of this IFB**.

## **1.6 Bid Obligation**

The contents of the IFB, Bid, and any clarification thereof submitted by the Successful Bidder shall become part of the contractual obligation and incorporated by reference into the Contract and any ensuing Agreement.

## **1.7 Compliance with IFB Specifications**

It is intended that this IFB describe the requirements and the Bid format in sufficient detail to secure comparable Bids. Failure to comply with all provisions of the IFB may, at the sole discretion of Williamson County, result in disqualification.

## **1.8 Withdrawal of Bid**

The Bidder may withdraw its Bid by submitting a written request over the signature of an authorized individual, as described herein above, to the Williamson County Purchasing Department any time prior to the submission deadline. The Bidder may thereafter submit a new Bid prior to the deadline. Modification of the Bid in any manner will not be considered if submitted after the deadline. Withdrawal of a Bid after the deadline will be subject to written approval of the Williamson County Purchasing Agent.

## **1.9 Evaluation/Award**

Williamson County reserves the right to use all pertinent information (also learned from sources other than disclosed in the BID process) that might affect Williamson County's judgment as to the appropriateness of an award to the lowest and best evaluated Bid. This information may be appended to the Bid evaluation process results. Information on a Bidder from reliable sources, and not within the Bidder's Bid, may also be noted and made part of the evaluation file. Williamson County shall have sole discretion for determining the reliability of the source.

To ensure the proper and fair evaluation of a solicitation, Williamson County prohibits unsolicited communication initiated by the Bidder to the County Official or Employee evaluating or considering the Bids prior to the time an award has been made. Unsolicited communication may be ground for disqualifying the offending Bidder from consideration or award of the solicitation then in evaluation, or any future solicitation.

Communication between Bidder and the County will be initiated by the appropriate County Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the solicitation.

To award the lowest responsible bidder in accordance with Texas Government Code and Local Government Code, Williamson County may consider, to the extent allowed by law, the following:

- Price
- Bidder's experience and reputation
- Quality of the Bidder's goods and/or services
- Bidder's safety record
- Bidder's proposed personnel
- Bidder's financial capabilities
- Any other relevant factors specifically listed in the IFB

### **Consideration of Location of Principal Office**

Pursuant to Texas Local Government Code Section 271.905, in purchasing under this title any real property or personal property that is not affixed to real property, if Williamson County receives one or more Bids from a Bidder whose principal place of business is in Williamson County and whose Bid is within three percent (3%) of the lowest bid price received by Williamson County from a Bidder who is not a resident of Williamson County, Williamson County may enter into a contract with:

- (1) the lowest Bidder; or

(2) the Bidder whose principal place of business is in Williamson County if the Williamson County Commissioners Court determines, in writing, that the local Bidder offers Williamson County the best combination of contract price and additional economic development opportunities for Williamson County created by the contract award, including the employment of residents of Williamson County and increased tax revenues to Williamson County.

This consideration does not prohibit Williamson County from rejecting all Bids. It is understood that the Commissioners Court of Williamson County, Texas, reserves the right to accept or reject any and/or all Bids for any or all goods and/or services covered in this IFB, and to waive informalities or defects in the Bid or to accept such Bid it shall deem to be in the best interest of Williamson County.

Awards should be made approximately sixty (60) business days after the Bid opening date Results may be obtained by viewing the Williamson County vendor portal at the following link:

<http://wilco-online.org/eBids/Bids.aspx>

## **1.10 Responsibility**

It is expected that a prospective Bidder will be able to affirmatively demonstrate Bidder's responsibility. A prospective Bidder should be able to meet the following requirements:

- a) have adequate financial resources, or the ability to obtain such resources as required;
- b) be able to comply with the required or proposed delivery schedule;
- c) have a satisfactory record of performance that can be determined thru references provided
- d) have a satisfactory record of performance with Williamson County; and
- e) be otherwise qualified and eligible to receive an award.

Williamson County may request representation and other information sufficient to determine Bidder's ability to meet these minimum standards listed above.

## **1.11 Firm Pricing**

For unit price items, all of the items listed are to be on a "per unit" basis, stating a firm price per unit or unit quantity of each item. Bidder must submit a firm price that must be good from the date of Bid opening for the fixed period of time set out in this IFB. Unless the IFB expressly states otherwise, this period shall be until the end of the Initial Contract Period. Bids which do not state a fixed price, or which are subject to change without notice, will not be considered. The Court may award a contract for the period implied or expressly stated in the lowest and best Bid.

## **1.12 Purchase Orders**

If required by the Williamson County Purchasing Department, a purchase order(s) may be generated to the Successful Bidder for goods and/or services. If a purchase order is issued, the purchase order number must appear on all itemized invoices and/or requests for payment.

## **1.13 Silence of Specifications**

The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

## **1.14 References**

Williamson County requires Bidder to supply a list of references where like services and/or goods have been supplied by their firm. References should be provided in accordance with Schedule "C" of this IFB.

## **2.0 BID FORMAT AND SUBMISSION**

### **2.1 Organization of Bid Contents for Submittal**

Each Bid should be organized and items submitted in the order described in Schedule “C” of this IFB. Schedule “C” of this IFB lists the order and timing for mandatory items to be received by the County.

### **2.2 Conflict of Interest**

No public official shall have interest in a contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171, as amended.

As of January 1, 2006, Bidders are responsible for complying with Local Government Code Title 5, Subtitle C, Chapter 176. Additional information may be obtained from the Williamson County website at the following link:

<http://www.wilco.org/CountyDepartments/Purchasing/ConflictofInterestDisclosure/taBid/689/language/en-US/Default.aspx>

Each Bidder must disclose any existing or potential conflict of interest relative to the performance of the requirements of this IFB. **Examples of potential conflicts may include an existing business or personal relationship between the Bidder, its principal, or any affiliate or subcontractor, with Williamson County or any other entity or person involved in any way in the project that is the subject of this IFB.** Similarly, any personal or business relationship between the Bidder, the principals, or any affiliate or subcontractor, with any employee or official of Williamson County or its suppliers must be disclosed. Any such relationship that might be perceived or represented as a conflict must be disclosed. Failure to disclose any such relationship or reveal personal relationships with Williamson County employees or officials may be cause for termination. Williamson County will decide if an actual or perceived conflict should result in Bid disqualification.

By submitting a Bid in response to this IFB, all Bidders affirm that they have not given, nor intend to give, at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a Williamson County public servant or any employee, official or representative of same, in connection with this procurement.

**Each Bidder must provide a Conflict of Interest Statement in accordance with Schedule “C” of this IFB. The Conflict of Interest Statement is attached as Schedule “E” to this IFB.**

### **2.3 Ethics**

The Bidder shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official or agent of Williamson County.

### **2.4 Bid Submittal Deadline**

The Bid is due no later than the submittal date and time set forth in the ‘Public Announcement and General Information’ listed above for this IFB. Contents of each Bid shall be submitted in accordance with Schedule “C” of this IFB.

### **2.5 Delivery of Bids**

All Bids are to be delivered on or before the submittal deadline, as noted in the ‘Public Announcement and General Information’ listed above for this IFB, to:

Williamson County Purchasing Department  
Attn: - **Bid # 14IFB00244 CTTC Water Line Replacement**  
901 South Austin Avenue  
Georgetown, Texas 78626

Williamson County will not accept any Bids received after the submittal deadline, and shall return such Bids unopened to the Bidder.

Williamson County will not accept any responsibility for Bids being delivered by third party carriers.

Bidder should submit one (1) original, and two (2) copies of their Bid. Bids will be opened publicly and read aloud. In the case of an RFP (Request for Proposal) submissions may be recognized in a manner to avoid public disclosure of contents; however, names of Bidders will then be read aloud.

Bidders should list the Bid Number on the outside of the box or envelope and note "Sealed Bid Enclosed."

- **FAILURE BY BIDDER TO INCLUDE ALL LISTED ITEMS OUTLINED IN SCHEDULE "C" OF THIS IFB MAY, AT THE SOLE DISCRETION OF WILLIAMSON COUNTY, RESULT IN THE REJECTION OF ITS BID.**



# **SCHEDULE “D”**

## **CONFLICT OF INTEREST QUESTIONNAIRE**

<b>For Bidder or other person doing business with local government entity</b>	
<p>This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.</p> <p>By law this questionnaire must be filed with the records administrator of the local government not later than the 7<sup>th</sup> business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006 Local Government Code.</p> <p>A person commits an offense if the person violates Section 176.0006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<b>OFFICE USE ONLY</b>
<p>1. Name of person doing business with local governmental entity.</p>	
<p>2. <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p style="margin-left: 40px;">(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<p>3. Describe each affiliation or business relationship with an employee or contractor of the local government entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.</p>	
<p>4. Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.</p>	

## CONFLICT OF INTEREST QUESTIONNAIRE FORM CIQ

### For Bidder or other person doing business with local government entity

5. Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?
- ☐ Yes ☐ No
- B. Is the filer of the questionnaire receive or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local government entity?
- ☐ Yes ☐ No
- C. Is the filer of the questionnaire affiliated with a Corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?
- ☐ Yes ☐ No

- D. Describe each affiliation or business relationship:

6. Describe any other affiliation or business relationship that might cause a conflict of interest.

7. Bidder  
Name: \_\_\_\_\_
- Authorized Signature: \_\_\_\_\_
- Title or Representative Capacity of Signer: \_\_\_\_\_
- Date: \_\_\_\_\_, 20\_\_\_\_

**SCHEDULE "E"**  
**BID AFFIDAVIT/ACKNOWLEDGMENT OF ADDENDA**  
CTTC Water Line Replacement  
**ACKNOWLEDGMENT OF ADDENDA**

RESPONDENT HEREBY ACKNOWLEDGES RECEIPT OF ALL ADDENDA THROUGH AND INCLUDING:

INITIAL AND ACKNOWLEDGE # OF ADDENDA IN BLANK

ADDENDUM # \_\_\_\_\_ ADDENDUM # \_\_\_\_\_ ADDENDUM # \_\_\_\_\_ ADDENDUM # \_\_\_\_\_

The undersigned certifies that the IFB and the Bidder's Bid have been carefully reviewed and are submitted as correct and final. Bidder further certifies and agrees to furnish any and/or all goods and/or services upon which prices are extended at the price Bid, and upon the conditions contained in the IFB.

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, a Notary Public in and for the State of \_\_\_\_\_, on this \_\_\_\_\_ day personally appeared \_\_\_\_\_ (Name of Signer), who after being by me duly sworn, did depose and say:

"I, \_\_\_\_\_ (Name of Signer) am a duly authorized officer

of/agent for \_\_\_\_\_ (Name of Bidder) and have been duly

authorized to execute the foregoing on behalf of the said \_\_\_\_\_ (Name of Bidder).

I hereby certify that the foregoing Bid has not been prepared in collusion with any other Bidder or other person or persons engaged in the same line of business prior to the official opening of this Bid. Further, I certify that the Bidder is not now, nor has been for the past six (6) months, directly or indirectly concerned in any pool or agreement or combination, to control the price of services/commodities Bid on, or to influence any person or persons to submit a Bid or not to submit a Bid thereon."

Name and Address of Bidder:

\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_ Telephone#: \_\_\_\_\_

By: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SUBSCRIBED AND SWORN to before me by the above-named \_\_\_\_\_ on

this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

# **SCHEDULE “F”**

## **TERMS AND CONDITIONS**

### **INTRODUCTION TO BIDDERS**

This IFB is to receive Bids from qualified Bidders regarding the goods and/or services which Williamson County seeks to procure under this IFB.

### **3.1 DEFINITIONS, TERMS AND CONDITIONS**

#### **3.2 Definitions**

- a. “Addenda” – Means any written or graphic instruments issued by Williamson County prior to the consideration of Bids which modify or interpret the Bid Documents by additions, deletions, clarifications, or corrections.
- b. “Agreement” – The Successful Bidder may be required by Williamson County to sign an additional Agreement containing terms necessary to ensure compliance with the IFB and Bidder’s Bid. Such ensuing Agreement(s) shall contain the Bid Specifications, Terms and Conditions that are derived from the IFB.
- c. “Contract” – This IFB and the Bid of the Successful Bidder shall become a contract between the Successful Bidder and Williamson County once the Successful Bidder’s Bid is properly accepted by the Williamson County Commissioners Court.
- d. “Bid Documents” – The Legal Notice, IFB including attachments, and any Addenda issued by Williamson County prior to the consideration of any Bids.
- e. “Bid” – The completed and signed bid form referred to as the Schedule “A” Price Sheet and ALL required forms and documentation listed in the bid package which have been submitted in accordance with the terms and conditions described in Schedule “C” of the IFB package. A Bid submitted in accordance with this IFB is irrevocable during the specified period for evaluation and acceptance of Bids unless a waiver is obtained from the Williamson County Purchasing Agent.
- f. “Bidder” – A person or entity who submits a Bid in response to this IFB.
- g. “IFB” – Refers to this document, together with the attachments thereto and any future addenda issued by Williamson County.
- h. “Successful Bidder” – The responsible Bidder to whom Williamson County intends to award the Contract.

#### **3.3 Terms and Conditions**

##### **3.3.1 Venue and Governing Law**

Bidder hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this IFB, the Contract and any ensuing Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this IFB, the Contract and any ensuing Agreement is governed by the laws of the United States, this IFB, the Contract and any ensuing Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

### **3.3.2 Incorporation by Reference and Precedence**

The Contract shall be derived from (1) the IFB and its Schedules; and (2) the Bidder's Bid. In the event of a dispute under the Contract, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) the IFB and its Schedules; and (2) the Bidder's Bid.

In the event Williamson County requires that an ensuing Agreement be executed following award and a dispute arises between (1) terms and conditions of the ensuing Agreement, (2) the IFB, and its Schedules; and (3) the Bidder's Bid, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) terms and conditions of the ensuing Agreement, (2) the IFB; and (3) the Bidder's Bid.

### **3.3.3 Ownership of Bid**

Each Bid shall become the property of Williamson County upon submittal and will not be returned to Bidders unless received after the submittal deadline.

### **3.3.4 Disqualification of Bidder**

Upon signing and submittal of the Bid, a Bidder offering to sell supplies, materials, services, or equipment to Williamson County certifies that the Bidder has not violated the antitrust laws of this state codified in Section 15.01, et seq, Business & Commerce Code, or the Federal Antitrust Laws, and has not communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. Any or all Bids may be rejected if Williamson County believes that collusion exists among the Bidders.

### **3.3.5 Funding**

County intends to budget and make sufficient funds available and authorize funds for expenditure to finance the costs of the Contract. Bidders understand and agree that the County's payment of amounts under the Contract shall be contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to make payments under this Contract.

### **3.3.6 Assignment, Successors and Assigns**

The Successful Bidder may not assign, sell, or otherwise transfer the Contract or any other rights or interests obtained under the Contract without written permission of the Williamson County Commissioners Court. The Contract and any ensuing Agreement shall be binding upon and inure to the benefit of the contracting parties hereto and their respective successors and permitted assigns.

### **3.3.7 Implied Requirements**

Products and services not specifically described or required in the IFB, but which are necessary to provide the functional capabilities described by the Bidder, shall be implied and deemed to be included in the Bid.

### **3.3.8 Termination**

**3.3.8.1 Termination for Cause:** Williamson County reserves the right to terminate the Contract and/or any ensuing Agreement for default if the Successful Bidder breaches any of the IFB Specifications, Terms and Conditions, including warranties of Bidder, if any, or if the Successful Bidder becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies Williamson County may have at law or in equity or as may otherwise be provided hereunder. Default may be construed as, but not

limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all other requirements to Williamson County's satisfaction, and/or to meet all other obligations and requirements.

**3.3.8.2 Termination for Convenience:** Williamson County may terminate the Contract and/or any ensuing Agreement for convenience and without cause or further liability, upon thirty (30) calendar day's written notice to Successful Bidder. In the event Williamson County exercises its right to terminate without cause, it is understood and agreed that only the amounts due to the Successful Bidder 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.

### **3.3.9 Non-Performance**

It is the objective of Williamson County to obtain complete and satisfactory performance of the requirements set forth herein. In addition to any other remedies available at law, in equity or that may be set out herein, failure to perform may result in a deduction of payment equal to the amount of the goods and/or services that were not provided and/or performed to the County's satisfaction. In the event of such non-performance, the County shall have the right, but shall not be obligated, to complete the services itself or by others and/or purchase the goods from other sources. If the County elects to acquire the goods or perform the services itself or by others, pursuant to the foregoing, the Successful Bidder shall reimburse the County, within ten (10) calendar days of demand, for all costs incurred by the County (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting the nonperformance which the Successful Bidder fails to meet pursuant to the requirements set out herein. In the event the Successful Bidder refuses to reimburse the County as set out in this provision, County shall have the right to deduct such reimbursement amounts from any amounts that may be then owing or that may become owing in the future to the Successful Bidder.

### **3.3.10 Proprietary Information and Texas Public Information Act**

All material submitted to the County shall become public property and subject to the Texas Public Information Act upon receipt. If a Bidder does not desire proprietary information in the Bid to be disclosed, each page must be clearly identified and marked proprietary at time of submittal or, more preferably, all proprietary information may be placed in a folder or appendix and be clearly identified and marked as being proprietary. The County will, to the extent allowed by law, endeavor to protect from public disclosure the information that has been identified and marked as proprietary. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to clearly identify and mark information as being proprietary as set forth under this provision will result in all unmarked information being deemed non-proprietary and available to the public. For all information that has not been clearly identified and marked as proprietary by the Bidder, the County may choose to place such information on the County's website and/or a similar public database without obtaining any type of prior consent from the Bidder.

To the extent, if any, that any provision in this IFB or in the Bidder's Bid is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Williamson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to Williamson County as to whether or not the same are available to the public. It is further understood that Williamson County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Williamson County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to Williamson County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

### **3.3.11 Right to Audit**

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

### **3.3.12 Testing and Inspections**

Williamson County reserves the right to inspect and test equipment, supplies, materials and goods for quality and compliance with this IFB, and ability to meet the needs of the user. Demonstration units must be available for review. Should the goods or services fail to meet requirements and/or be unavailable for evaluation, Williamson County can deem the Bidder to be in breach and terminate the Contract and/or any ensuing Agreement(s).

### **3.3.13 Bid Preparation Cost**

Cost of developing Bids is entirely the responsibility of Bidders and shall not be charged to Williamson County. There is no expressed or implied obligation for Williamson County to reimburse Bidders for any expense incurred in preparing a Bid in response to this IFB and Williamson County will not reimburse Bidders for such expenses.

### **3.3.14 INDEMNIFICATION**

**SUCCESSFUL BIDDER SHALL INDEMNIFY, DEFEND AND SAVE HARMLESS WILLIAMSON COUNTY, ITS OFFICIALS, EMPLOYEES, AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING FROM ACTIVITIES OF BIDDER, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED HEREUNDER THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF BIDDER OR ANY OF BIDDER'S AGENTS, SERVANTS OR EMPLOYEES, AS WELL AS ALL CLAIMS OF LOSS OR DAMAGE TO THE BIDDER'S AND WILLIAMSON COUNTY'S PROPERTY, EQUIPMENT, AND/OR SUPPLIES.**

**FURTHERMORE, WILLIAMSON COUNTY, ITS OFFICIALS, EMPLOYEES, AGENTS AND AGENTS' EMPLOYEES SHALL NOT BE LIABLE FOR DAMAGES TO THE SUCCESSFUL BIDDER ARISING FROM ANY ACT OF ANY THIRD PARTY, INCLUDING, BUT NOT BEING LIMITED TO THEFT. SUCCESSFUL BIDDER FURTHER AGREES TO INDEMNIFY, DEFEND AND SAVE HARMLESS WILLIAMSON COUNTY FROM, ITS OFFICIALS, EMPLOYEES, AGENTS AND AGENTS' EMPLOYEES AGAINST ALL CLAIMS OF WHATEVER NATURE ARISING FROM ANY ACCIDENT, INJURY, OR DAMAGE WHATSOEVER CAUSED TO ANY PERSON OR TO THE PROPERTY OF ANY PERSON OCCURRING IN RELATION TO SUCCESSFUL BIDDER'S PERFORMANCE OF ANY SERVICES REQUESTED HEREUNDER DURING THE TERM OF THE CONTRACT AND/OR ANY ENSUING AGREEMENT(S).**

**SUCCESSFUL BIDDER SHALL TIMELY REPORT ALL CLAIMS, DEMANDS, SUITS, ACTIONS, PROCEEDINGS, LIENS OR JUDGMENTS TO WILLIAMSON COUNTY AND SHALL, UPON THE RECEIPT OF ANY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT, NOT LATER THAN THE FIFTEENTH (15<sup>TH</sup>) DAY OF EACH MONTH; PROVIDE WILLIAMSON COUNTY WITH A WRITTEN REPORT ON EACH SUCH MATTER, SETTING FORTH THE STATUS OF EACH MATTER, THE SCHEDULE OR PLANNED PROCEEDINGS WITH RESPECT TO EACH MATTER AND THE COOPERATION OR ASSISTANCE, IF ANY, OF WILLIAMSON COUNTY REQUIRED BY SUCCESSFUL BIDDER IN THE DEFENSE OF EACH MATTER. SUCCESSFUL BIDDER'S DUTY TO DEFEND, INDEMNIFY AND HOLD WILLIAMSON COUNTY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THE CONTRACT AND/OR ANY ENSUING AGREEMENT(S) UNLESS OTHERWISE AGREED BY WILLIAMSON COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.**

IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES AS TO WHETHER A CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT APPEARS TO HAVE BEEN CAUSED BY OR APPEARS TO HAVE ARISEN OUT OF OR IN CONNECTION WITH ACTS OR OMISSIONS OF WILLIAMSON COUNTY, BIDDER SHALL NEVER-THE-LESS FULLY DEFEND SUCH CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT UNTIL AND UNLESS THERE IS A DETERMINATION BY A COURT OF COMPETENT JURISDICTION THAT THE ACTS AND OMISSIONS OF BIDDER ARE NOT AT ISSUE IN THE MATTER.

Successful Bidder's indemnification shall cover, and Successful Bidder agrees to indemnify Williamson County, in the event Williamson County is found to have been negligent for having selected Successful Bidder to perform the work described in this request. The provision by Successful Bidder of insurance shall not limit the liability of Successful Bidder under the Contract and/or any ensuing Agreement.

### **3.3.15 Waiver of Subrogation**

Successful Bidder and Successful Bidder's insurance carrier waive any and all rights whatsoever with regard to subrogation against Williamson County as an indirect party to any suit arising out of personal or property damages resulting from the Bidder's performance under this Contract and any ensuing Agreement.

### **3.3.16 Relationship of the Parties**

The Successful Bidder shall be an independent contractor and shall assume all of the rights, obligations, liabilities, applicable to it as such independent contractor hereunder and any provisions herein which may appear to give County the right to direct the Successful Bidder as to details of doing work herein covered or to exercise a measure of control over the work shall be deemed to mean that the Successful Bidder shall follow the desires of County in the results of the work only. County shall not retain or have the right to control the Successful Bidder's means, methods or details pertaining to the Successful Bidder's performance of the work. County and the Successful Bidder hereby agree and declare that the Successful Bidder is an independent contractor and as such meets the qualifications of an "Independent Contractor" under Texas Workers Compensation Act, Texas Labor Code, Section 406.141, that the Successful Bidder is not an employee of County, and that the Successful Bidder and its employees, agents and sub-contractors shall not be entitled to workers compensation coverage or any other type of insurance coverage held by County.

### **3.3.17 Sole Provider**

The Successful Bidder agrees and acknowledges that it shall not be considered a sole provider of the goods and/or services described herein and that Williamson County may contract with other providers of such goods and/or services if Williamson County deems, at its sole discretion, that multiple providers of the same goods and/or services will serve the best interest of Williamson County.

### **3.3.18 Force Majeure**

If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

### **3.3.19 Severability**

If any provision of this IFB, the Contract or any ensuing Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof, but rather the entire IFB, Contract or any ensuing Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in



accordance therewith. The parties acknowledge that if any provision of this IFB, the Contract or any ensuing Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this IFB, the Contract or any ensuing Agreement and be deemed to be validated and enforceable.

### **3.3.20 Equal Opportunity**

Neither party shall discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

### **3.3.21 Notice**

Any notice to be given shall be in writing and may be affected by personal delivery, or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

Williamson County Purchasing Department  
Purchasing Agent  
901 South Austin Avenue  
Georgetown, Texas 78626

Bidder: Address set out in Schedule "F" referred to as the Bid Affidavit.

Notices given in accordance with this provision shall be effective upon (i) receipt by the party to which notice is given, or (ii) on the third (3rd) calendar day following mailing, whichever occurs first.

### **3.3.22 Sales and Use Tax Exemption**

Williamson County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. § 151.309, as amended, and the services and/or goods subject hereof are being secured for use by Williamson County.

### **3.3.23 Compliance with Laws**

Williamson County and Successful Bidder shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of the Contract and any ensuing Agreement, including, without limitation, Workers' Compensation laws, salary and wage statutes and regulations, licensing laws and regulations. When required, the Successful Bidder shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

### **3.3.24 Incorporation of Schedules, Exhibits, Appendices and Attachments**

All of the Schedules, Exhibits, Appendices and Attachments referred to herein are incorporated by reference as if set forth verbatim herein.

### **3.3.25 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.

### **3.3.26 No Waiver**

The failure or delay of any party to enforce at any time or any period of time any of the provisions of this IFB, the Contract or any ensuing Agreement shall not constitute a present or future waiver of such provisions nor the right of either party to enforce each and every provision. Furthermore, no term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other, different or subsequent breach.

### **3.3.27 Current Revenues**

The obligations of the parties under the Contract and any ensuing Agreement do not constitute a general obligation or indebtedness of County for which County is obligated to levy, pledge, or collect any form of taxation. It is understood and agreed that Williamson County shall have the right to terminate the Contract and any ensuing Agreement at the end of any Williamson County fiscal year if the governing body of Williamson County does not appropriate sufficient funds as determined by Williamson County's budget for the fiscal year in question. Williamson County may effect such termination by giving written notice of termination to the Successful Bidder at the end of its then-current fiscal year.

### **3.3.28 Binding Effect**

This Contract and any ensuing Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

### **3.3.29 Assignment**

The Successful Bidder's interest and duties hereunder may not be assigned or delegated to a third party without the express written consent of Williamson County.

### **3.3.30 Safety**

Successful Bidder is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with any services to be provided hereunder. The safety program shall comply with all applicable requirements of the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations.

### **3.3.31 General Obligations and Reliance**

Successful Bidder shall perform all services and/or provide all goods, as well as those reasonably inferable and necessary for completion and provision of services and/or goods required hereunder. The Successful Bidder shall keep the County informed of the progress and quality of the services. Successful Bidder agrees and acknowledges that County is relying on Successful Bidder's represented expertise and ability to provide the goods and/or services described herein. Successful Bidder agrees to use its best efforts, skill, judgment, and abilities to perform its obligations in accordance with the highest standards used in the profession and to further the interests of County in accordance with County's requirements and procedures. Successful Bidder's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the County nor shall the Successful Bidder be released from any liability by reason of such approval by the County, it being understood that the County at all times is ultimately relying upon the Successful Bidder's skill and knowledge in performing the services and providing any goods required hereunder.

### **3.3.32 Contractual Development**

The contents of the IFB and the selected Bid will become an integral part of the Contract, but may be modified, at Williamson County's sole discretion, by provisions of an ensuing Agreement. Therefore, the Bidder must agree to inclusion in an ensuing Agreement of the Bid Specifications, Terms and Conditions of this IFB. If an ensuing Agreement is required under this IFB, information relative to the Agreement will be located in Schedule "C" of the IFB.

### **3.3.33 Survivability**

All applicable agreements that were entered into between Successful Bidder and Williamson County under the terms and conditions of the Contract and/or any ensuing Agreement shall survive the expiration or termination thereof for ninety (90) days unless a new contract has been awarded.

### **3.3.34 Air Quality**

In determining the overall best Bid, the County may, to the extent applicable, exercise the following option granted to local governments under the Texas Local Government Code.

Option – TLGC § 271.907. This option allows the County to evaluate Bids and give preference to goods and/or services of a Bidder that demonstrates that the Bidder meets or exceeds any and all state or federal environmental standards, including voluntary standards, relating to air quality. If the Bid being submitted will have an effect on air quality for Williamson County (as it relates to any state, federal, or voluntary air quality standard), then the Bidder is encouraged to provide information in narrative form indicating the anticipated air quality impact. Bidders are expected to meet all mandated state and federal air quality standards.

### **3.3.35 Entire Agreement**

The Contract and any ensuing Agreement shall supersede all prior Agreements, written or oral between the Successful Bidder and County and shall constitute the entire Agreement and understanding between the parties with respect to the services and/or goods to be provided. Each of the provisions herein shall be binding upon the parties and may not be waived, modified amended or altered except by writing signed by the Successful Bidder and County.

### **3.3.36 Payment**

Unless specified otherwise in this IFB or an ensuing Agreement, the following provision shall control the County's method of payment:

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 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 Successful Bidder, County shall notify Successful Bidder of the error not later than the twenty first (21<sup>st</sup>) day after the date County receives the invoice. If the error is resolved in favor of Successful Bidder, Successful Bidder shall be entitled to receive interest on the unpaid balance of the invoice submitted by Successful Bidder beginning on the date that the payment for the invoice became overdue. If the error is

resolved in favor of the County, Successful Bidder 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:

- (1) Name, address, and telephone number of Successful Bidder and similar information in the event the payment is to be made to a different address
- (2) County contract, Purchase Order, and/or delivery order number
- (3) Identification of items or service as outlined in the Contract
- (4) Quantity or quantities, applicable unit prices, total prices, and total amount
- (5) 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](mailto:accountspayable@wilco.org), 512-943-1500.

### 3.3.37 Contractual Formation and Ensuing Agreement

The IFB and the Bidder's Bid, when properly accepted by the Williamson County Commissioners Court, shall constitute a contract equally binding between the Successful Bidder and Williamson County.

**If an ensuing Agreement is required by this IFB, that information will be provided in Schedule "C".** The Successful Bidder shall be required to execute the Agreement at the Williamson County Purchasing Department approximately ten (10) calendar days after the Successful Bidder is notified of recommendation for award. The ensuing Agreement shall be in the same form as the Agreement which is attached to the end of this IFB. The only anticipated changes in the ensuing Agreement will be to include additional exhibits, to fill in blanks to identify the Successful Bidder, and terms relating to the compensation, or to revise the Agreement to accommodate corrections, changes in the scope of services, or changes pursuant to Addenda issued. **Bidders should raise any questions regarding the terms of the Agreement in the form of written questions or submittals as described in the Public Announcement and General Information portion of this IFB.** Because the signed ensuing Agreement will be substantively and substantially derived from the attached Agreement, each Bidder is urged to seek independent legal counsel as to any questions about the terms, conditions or provisions contained in the Agreement before submitting a Bid. Again, the attached Agreement contains important legal provisions and is considered part and parcel of this IFB. Failure or refusal to sign aforesaid Agreement shall be grounds for Williamson County to revoke any award which has been issued, forfeit Bid security, if applicable, and select another Bidder.

### 3.3.38 Contract Term

The Contract Period is the date of award through final completion of project. This project is to be substantially completed one hundred and fifty (150) calendar days after County's Notice to Proceed with the work and finally completed within one hundred and sixty (160) calendar days after County's Notice to Proceed.

The Contractor will be given written notice to begin work on this project. Work on this project shall begin within ten (10) working days after such notification. Contract shall continue for ninety (90) working days (as defined in bid specifications) after mobilization.

A "Working Day" shall mean Monday through Friday (excluding County approved holidays), if weather permits the performance of the work (as determined by the Engineer) for a continuous period of at least 8 hours (excluding lunch) between 7:00 A.M. and 5:00 P.M. Time begins with crews on site with equipment and ready for operation.

**Liquidated damages** of \$200 per calendar day for failure to substantially complete the work within the allotted time will be applied.

### 3.3.39 Performance and Payment Bonds

**To the extent this IFB is for the procurement of a public work contract, bonding information will appear in Schedule “C” and the following shall apply:**

Chapter 262.032 of the Texas Local Government Code governs the requirements for performance bonds for government entities making public work contracts. A performance bond is required if the contract is in excess of \$50,000 and is to be made for the full amount of the contract.

Chapter 2253.021 of the Texas Government Code governs the requirements for payment bonds for government entities making public work contracts. A payment bond is required if the contract is in excess of \$25,000 and is to be made for the full amount of the contract.

The bonds are to be executed and delivered to the County **prior to being recommended for award of the Contract**. The bonds must be executed by a corporate surety or sureties in accordance with the Texas Insurance Code. For unit price contracts, the total contract price shall be estimated and calculated by multiplying the estimated quantities to the Bidder's unit bid price.

If the public works contract is less than \$50,000, the performance bond will not be required as long as the contract provides that payment is not due until the work is completed and accepted by the County.

### 3.3.40 Bidders Bond

All Bids requiring a Bid Bond shall be accompanied by a certified cashier's check upon a National or State bank in an amount not less than five percent (5%) of the total maximum bid price, payable without recourse to Williamson County, or a bid bond in the same amount from a reliable surety company, as a guarantee that the Bidder will enter into a contract and **execute and deliver to the County performance and payment bonds prior to being recommended for award of the Contract. Bid guarantees must be submitted in the same sealed envelope with the Bid.** Bids submitted without check or bid bonds will not be considered. For unit price contracts, the total maximum bid price shall be estimated and calculated by multiplying the estimated quantities to the unit bid price. **The requirements for Bid Bond submission will be listed in Schedule “C” of this IFB.**

### 3.3.41 Intentionally Deleted

### 3.3.42 Insurance Requirements

By signing its Bid, the Successful Bidder agrees to maintain at all times during any term of the Contract and any ensuing Agreement, at Successful Bidder's cost, **insurance in accordance with Schedule “C” of this IFB.**

Successful Bidder will be required to submit Certificates of Insurance **prior to being awarded the Contract**. A copy of the issued policy should be submitted to the Purchasing Department within 60 days of the contract award date.

All certificates of insurance coverage as specified below must be provided to Williamson County at the following address:

Williamson County  
901 South Austin Avenue  
Georgetown, Texas 78626

Failure to comply with these Insurance Requirements may result in the termination of the Contract and any ensuing Agreement between the Successful Bidder and County.

By signing its Bid, the Successful Bidder agrees to maintain at all times during any term of the Contract and any ensuing Agreement, at Successful Bidder's cost, insurance in accordance with this provision.

The following coverage limits shall be required at a minimum:

- A. Worker's Compensation Statutory – Texas Law
- B. Employer's Liability:
- |                           |                        |
|---------------------------|------------------------|
| Bodily Injury by Accident | \$500,000 Ea. Accident |
| Bodily Injury by Disease  | \$500,000 Ea. Employee |
| Bodily Injury by Disease  | \$500,000 Policy Limit |
- C. Comprehensive general liability including completed operations and contractual liability insurance for bodily injury, death, or property damages in the following amounts:
- | COVERAGE                        | PER PERSON  | PER OCCURRENCE |
|---------------------------------|-------------|----------------|
| Comprehensive General Liability | \$1,000,000 | \$1,000,000    |
| Aggregate policy limits:        | \$1,000,000 |                |
- D. Comprehensive automobile and auto liability insurance (covering owned, hired, leased and non-owned vehicles):
- | COVERAGE                        | PER PERSON         | PER OCCURRENCE |
|---------------------------------|--------------------|----------------|
| Bodily injury (including death) | \$1,000,000        | \$1,000,000    |
| Property damage                 | \$1,000,000        | \$1,000,000    |
| Aggregate policy limits:        | No aggregate limit |                |

Successful Bidder's property will not be covered by any insurance that may be carried by Williamson County. Successful Bidder assumes the risk of loss on its contents and property that are situated on/in/around Williamson County property. The Successful Bidder is strongly encouraged to obtain insurance on its property to the extent deemed necessary by the Successful Bidder.

The deductible for an insurance policy required hereunder shall not exceed \$100,000. **Williamson County shall be named as an additional insured under any policy of insurance required hereunder.**

Successful Bidder shall not commence any work until it has obtained all required insurance and such insurance has been approved by County. Successful Bidder shall not allow any subcontractor(s) to commence work to be performed in until all required insurance has been obtained by such subcontractor(s) and approved by County. Approval of the insurance by County shall not relieve or decrease the liability of Successful Bidder or its subcontractor(s) hereunder.

The required insurance must be written by a company approved to do business in the State of Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. Successful Bidder shall furnish County with a certification of coverage issued by the insurer. Successful Bidder shall not cause any insurance to be canceled nor permit any

insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) CALENDAR DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

It is the intention of the County, and agreed to and hereby acknowledged by the Successful Bidder, that no provision of this Contract or any ensuing Agreement shall be construed to require the County to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Contract or any ensuing Agreement.

#### **2.2.4 Workers' Compensation Coverage Requirements**

The Texas Labor Code, §406.096, requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity such as Williamson County. The rule requires Williamson County to timely obtain certificates of coverage and retain them for the duration of the project. The rule also sets out the language to be included in the Bid specifications and in contracts awarded by a governmental entity and the information required to be in the posted notice to employees. The rule is adopted under the Texas Labor Code, §402.061.

The information provided below is a result of this rule. By submitting your Bid to the County, you are acknowledging that this rule is a part of these Bid specifications, and that you will observe and abide by all of the requirements outlined in the rule. You are further agreeing that should your Bid be accepted by the Williamson County Commissioners Court, the necessary certificates of coverage showing workers' compensation coverage, will be provided to the following name and address prior to beginning work:

Assistant Purchasing Agent (or successor)  
Williamson County Purchasing Department  
901 S. Austin Ave.  
Georgetown, TX 78626

Failure to comply with this request may result in termination of the Contract and any ensuing Agreement. If you have any questions related to this ruling and/or requirement, you are encouraged to contact either the Williamson County Purchasing Department at (512) 943-1546, or you may call the Texas Workers' Compensation Commission at (800) 372-7713.

A. The following words and terms, when used in this provision, shall have the following meanings. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.

- (1) Certificate of coverage (certificate)--A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a workers' compensation coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.
- (2) Building or construction--Has the meaning defined in the Texas Labor Code, §406.096(e)(1).
- (3) Contractor--A person bidding for or awarded a building or construction project by Williamson County.
- (4) Coverage--Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
- (5) Coverage agreement--A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Texas Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G, as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

- (6) Duration of the project--Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by Williamson County.
- (7) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (8) Project--Includes the provision of all services related to a building or construction contract for Williamson County.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of workers compensation coverage to Williamson County prior to being awarded the Contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with Williamson County showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to Williamson County:

- (1) a certificate of coverage, prior to that person beginning work on the project, so Williamson County will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify Williamson County in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the contractor:
  - (a) a certificate of coverage, prior to the other person beginning work on the project; and
  - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;



- (6) notify Williamson County in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this Contract or providing or causing to be provided a certificate of coverage, the contractor is representing to Williamson County that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles Williamson County to declare the Contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from Williamson County

### **3.3.43 Legal Liability Information**

The Successful Bidder shall disclose all legal liability information by listing any pending litigation or anticipated litigation that your firm is involved in, including but not limited to, potential or actual legal matters with private parties and any local, State, Federal or international governmental entities. Williamson County reserves the right to consider legal liability information in the recommendation of any proposed contract to the Williamson County Commissioners Court.

## **Schedule “G”**

### **LIST OF OTHER MANDATORY DOCUMENTATION**

- **Certificates of Insurance;**
- **Performance, Payment Bond**
- **Assumed Name Certificate**
- **Pending or Anticipated Litigation Information (as mandated by Section 3.3.43 of the Standard Terms & Conditions)**

## **Schedule “H”**

**Ensuing Agreement  
(Presumptive  
Contract Form)**



## **Agreement for Construction Services (Central Texas Treatment Center Water Line Replacement)**

This Agreement ("Agreement") between Williamson County, Texas, a political subdivision of the State of Texas ("Owner") and [REDACTED] ("Contractor") is entered into in accordance with the following terms and conditions:

**ARTICLE 1 SCOPE OF WORK:** The Owner desires to retain Contractor to provide the construction services described herein. The Contractor shall have the overall responsibility for and shall provide complete construction services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the following described construction services, or any phase of such services, in accordance with the Owner's requirements and the terms of this Agreement (hereinafter collectively referred to as the "Work"):

**As described in the Invitation for Bid #14IFB00244, including the specifications set forth in the attached Exhibit "A", which is incorporated herein as if copied in full.**

**ARTICLE 2 CONTRACT PRICE:** Owner agrees to pay to the Contractor, for the satisfactory performance of the Work, the sum of [REDACTED] (\$ [REDACTED]) in accordance with the terms and conditions of this Agreement.

**ARTICLE 3 PLANS AND SPECIFICATIONS:** The Work shall be performed pursuant to and in accordance with the following described plans and specifications, as well as any revisions made thereto:

**As described in the Invitation for Bid #14IFB00244, including any exhibits, which is incorporated herein as if copied in full.**

[REDACTED]

**Additional Work:** Should Owner choose to add additional work, such additional work shall be described in a separate written amendment to this Agreement wherein the additional work shall be described and the parties shall set forth the amount of compensation to be paid by Owner for the additional work. Contractor shall not begin any additional work and Owner shall not be obligated to pay for any additional work unless a written amendment to this Agreement has been signed by both parties.

### **ARTICLE 4 SUBSTANTIAL AND FINAL COMPLETION:**

**4.1 Commencement of Work. Contractor shall commence the Work upon instruction to do so from the Owner and Construction shall be deemed to have commenced on the date of such instruction.**

**4.2 Substantial Completion. "Substantial Completion" means the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the Owner's opinion, the Work has progressed to the point such that all parts of the Work under consideration are fully operational and usable for intended purposes, as evidenced by a Certificate of Substantial Completion approved by the Owner. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially**

complete, the Contractor shall notify Owner's Designated Representative (sometimes referred to as the "ODR") and request a determination as to whether the Work or designated portion thereof is substantially complete. If the ODR does not consider the Work substantially complete, the ODR will notify the Contractor giving reasons therefore. Failure on the Owner's part to list a reason does not alter the responsibility of the Contractor to complete all Work in accordance with the terms of this Agreement. After satisfactorily completing items identified by Owner's Designated Representative, the Contractor shall then submit another request for the ODR to determine Substantial Completion. If The ODR considers the Work substantially complete, The ODR will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final completion and final payment, shall establish the time within which the Contractor shall finish the punch list, and shall establish responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the terms and conditions of this Agreement. The certificate of Substantial Completion shall be signed by the Owner and the Contractor to evidence acceptance of the responsibilities assigned to them in such certificate.

Substantial Completion (as defined in this agreement) for all stages of the Work shall be achieved on or before the following Substantial Completion date:

DATE FOR SUBSTANTIAL COMPLETION: One Hundred and Fifty **(150) calendar** days after the date of County's Notice to Proceed.

**4.3 Final Completion.** The Work shall be fully and finally completed within One Hundred and Sixty **160 calendar days** the date of County's Notice to Proceed; provided, however, Owner may extend said time period in the event bad weather affects the progress of the Work. Owner shall, at its sole discretion, determine when the Work has been fully and finally completed to its satisfaction.

**4.4 Liquidated Damages.** For each consecutive calendar day after the date of Substantial Completion that the Work is not Substantially Complete, the Owner may deduct the amount of Two Hundred Dollars per day (**\$200.00/day**) from any money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion. The parties stipulate and agree that calculating Owner's actual damages for late completion of the Work would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

## ARTICLE 5 PAYMENT:

Contractor shall have a duty to submit to the ODR by the end of each month a statement showing the total value of the Work performed during such month. The statement shall also include the value of all sound materials delivered on the Work site and to be included in the Work and all partially completed Work, whether bid as a lump sum or a unit item, which in the opinion of the ODR is acceptable. The ODR shall examine and approve or modify and approve such statement. The Owner shall then pay the Contractor pursuant to Chapter 2251 of the Texas Government Code ("Texas Prompt Payment Act"), as set forth in Article 11.1 of this Agreement, the total amount of the approved statement less all previous payments and all further sums that may be retained by the Owner under the terms of this Agreement or under the law. **Statements are not considered "received" until reviewed by the ODR and an approved statement is submitted to the Williamson County Auditor's Office; therefore, Contractor must ensure timely delivery of statements for review and processing.**

At any time following the completion of all Work, including all punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified application for final payment, including all sums held as retainage if any, to the ODR for its review and approval. Contractor shall submit, prior to or with the application for final payment, final copies of all close out documents, including maintenance and operating instructions, guarantees and warranties, certificates, and all other items required by this Agreement. Contractor shall also submit consent of surety to final payment, an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, have been paid or will be paid or otherwise satisfied within the period of time required by Chapter 2251, Texas Government Code. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Agreement. Owner is entitled to rely upon this affidavit and the Contractor may not submit a claim on behalf of a subcontractor or vendor if that claim has not been noted as an exception in the affidavit.

Owner may deduct from the final payment all sums due from Contractor for any reason, Liquidated Damages and all other deductions authorized by this Agreement.

Final payment shall constitute a waiver of all claims by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for final payment. Provided, however, that the Work shall not be deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

## ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES AND COVENANTS:

**6.1** Contractor shall perform all services specifically allocated to it hereunder, as well as those services reasonably inferable and necessary for completion of the Work. The Contractor shall keep the Owner informed of the progress and quality of the Work. Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide the Work described in this Agreement. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations in accordance with the highest standards used in the profession and to further the interests of Owner in accordance with Owner's requirements and procedures. Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Contractor be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.

**6.2** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of

the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations.

**6.3** Contractor shall be an independent contractor under this Agreement and shall assume all of the rights, obligations, liabilities, applicable to it as such independent contractor hereunder and any provisions in this agreement which may appear to give Owner the right to direct Contractor as to details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only. Owner shall not retain or have the right to control the Contractor's means, methods or details pertaining to the Contractor's performance of the Work described herein, nor shall Owner have the power to direct the order in which Contractor's Work is performed under this agreement. Owner and Contractor hereby agree and declare that Contractor is an Independent Contractor and as such meets the qualifications of an Independent Contractor under Texas Worker's Compensation Act, Texas Labor Code, Section 406.141, that the Contractor is not an employee of Owner for purposes of this Agreement, and that the Contractor and its employees, agents and sub-subcontractors shall not be entitled to worker's compensation coverage or any other type of insurance coverage held by Owner.

**6.4** As part of Contractor obligation to coordinate the Work, Contractor shall:

- a. cooperate with the ODR and endeavor to further the interests of the Owner and the Work;
- b. provide an on-site, full-time superintendent for the duration of the Work;
- c. visit the Work site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required;
- d. at Owner's request, attend public meetings and hearings concerning the development of the Work;
- e. review all drawings, specifications, and other plans as they are developed by the Owner and/or its architect and advise Owner of any error, inconsistency or omission discovered in the drawings, specifications, and other plans;
- f. review the drawings, specifications, and other plans for compliance with all applicable laws and code requirements;
- g. advise Owner of any tests that should be performed;
- h. organize and maintain a competent, full-time staff at the Work site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work;
- i. attend Owner's regularly scheduled Work progress meetings and fully advise the ODR of the Work status including schedule, costs, quality and changes;
- j. assist Owner in obtaining building permits and obtain special permits for permanent improvements as required by law; and
- k. shall coordinate, monitor and inspect the Work of subcontractors to ensure conformance with the drawings, specifications, other plans and with the terms of this Agreement.

**6.5** Contractor shall identify every subcontractor it intends to use for the Work to the Owner in writing at least ten (10) days before entering into any subcontract. Contractor shall not use any subcontractor to which Owner has a reasonable objection. If Owner does not object to a particular subcontractor with said ten (10) days, such subcontract may be considered acceptable to Owner. Following Owner's acceptance of a subcontractor, that subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

**6.6** Contractor's designated representative, which is set forth below Contractor's signature herein below, shall be responsible for the day-to-day management of the Work on behalf of Contractor. The designated representative shall be the Owner's primary contact during the Work and shall be available as required for the benefit of the Work and the Owner. The contractor's designated representative shall be authorized to act on behalf of and bind the Contractor in all matters related to the Work including, but not limited to, execution of Change Orders.

**6.7 NO ALTERATIONS OR CHANGES SHALL BE MADE, HOWEVER, EXCEPT UPON THE WRITTEN ORDER OF THE OWNER, OR THE ODR.**

**6.8** Contractor shall promptly correct any defective Work at Contractor's sole expense, unless the Owner specifically agrees, in writing, to accept the Work.

**6.9** Contractor shall maintain and deliver the close out documents that describe changes or deviations from the original drawings, specifications and plans that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

#### **COMMISSIONING AND WARRANTY RESPONSIBILITIES**

**6.10** Contractor shall provide commissioning, starting and check-out services for the systems installed as a part of the Work prior to completion and acceptance. Operation manuals and instructions will be provided to the Owner, the systems will be demonstrated and training provided to Williamson County's operators upon completion and prior to acceptance.

**6.11** Contractor hereby warrants that the materials and equipment provided for the Work will be of good quality and new unless otherwise required or permitted by the Owner; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the plans, specifications, drawings and the terms of this Agreement.

**6.12** Contractor shall provide warranty services for the Work for a full **12 months** (30 months for Work involving mechanical services, if any) following Final Completion and final payment. Just before the warranty period expires, Contractor shall attend an on-site meeting with the Owner to ensure that all warranty issues have been identified and properly remedied.



## ARTICLE 7 OWNER'S RESPONSIBILITIES

### 7.1 The Owner shall:

- a. provide the general schedule for the Work provided Owner is of the opinion such schedule is necessary. The general schedule will set forth the Owner's plan for milestone dates and completion of the Work;
- b. identify a person as its ODR who is authorized to act in the Owner's behalf with respect to the Work. The ODR shall examine the documents submitted by the Contractor and shall render decisions on behalf of the Owner to the extent allowed by Texas law;
- c. at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Work;
- d. furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Contractor's services and of the Work;
- e. shall have the right to reject any defective Work. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Contractor on demand; and
- f. Owner shall furnish to the Contractor a sufficient number of plans, drawings and specifications sets.

## ARTICLE 8 INSURANCE AND INDEMNITY

**8.1 Insurance.** The Contractor shall carry insurance in the types and amounts indicated below for the duration of the Agreement, which shall include items owned by Owner in the care, custody and control of Contractor prior to and during construction. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Agreement, as proof of continuing coverage. Contractor shall update all expired policies prior to submission of any payment requests hereunder. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.

**8.1.1** The Contractor shall provide and maintain, until the Work covered in this Agreement is completed and accepted by the Owner, the minimum insurance coverage in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to Owner.

Type of Coverage		Limits of Liability
a. Worker's Compensation		Statutory
b. Employer's Liability		
Bodily Injury by Accident		\$500,000 Ea. Accident
Bodily Injury by Disease		\$500,000 Ea. Employee
Bodily Injury by Disease		\$500,000 Policy Limit
c. Comprehensive general liability including completed operations and contractual liability insurance for bodily injury, death, or property damages in the following amounts:		
COVERAGE OCCURRENCE	PER PERSON	PER
Comprehensive General Liability (including premises, completed operations	\$1,000,000	\$1,000,000

and contractual)

Aggregate policy limits: \$1,000,000

- d. Comprehensive automobile and auto liability insurance (covering owned, hired, leased and non-owned vehicles):

COVERAGE OCCURRENCE	PER PERSON	PER
Bodily injury (including death)	\$1,000,000	\$1,000,000
Property damage	\$1,000,000	\$1,000,000
Aggregate policy limits	No aggregate limit	

**8.1.2** The above insurance requirements are not intended to be compounded with the Contractor's standing insurance policies. If the Contractor already has in force insurance policies which provide the required coverage, there is no need to purchase duplicate coverage for this Work.

**8.1.3** Policies must include the following clauses, as applicable.

- a. "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to Williamson County."
- b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by Williamson County for liability arising out of operations under the Agreement with Williamson County."
- c. "Williamson County, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under Agreement with the Owner." This is not applicable to the workers' compensation policy.
- d. "The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of Williamson County."

**8.1.4** Workers' Compensation Insurance Coverage:

In the event that Contractor employs any individual to perform any portion of the Work, Contractor shall comply with Texas Labor Code, §406.096, which requires workers' compensation insurance coverage for all employees providing services on a building or construction project for a governmental entity.

a. Definitions:

- (1) Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the Duration of the Work.
- (2) Duration of the Work - includes the time from the beginning of the Work until the Work has been completed and accepted by the Owner.
- (3) Coverage – Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
- (4) Persons providing services relating to the Work ("subcontractor") - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform the Work, regardless of whether that person contracted directly with the Contractor

and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services in relation to the Work. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- b. The Contractor shall provide Coverage, based on proper reporting of classification codes and payroll amounts and filing of any Coverage agreements, which meets the statutory requirements of Texas labor Code, §401.011(44) for all employees of the Contractor providing services in relation to the Work, for the Duration of the Work.
- c. The Contractor must provide a Certificate of Coverage to the Owner prior to or contemporaneously with the execution of this Agreement.
- d. If the Coverage period shown on the Contractor's current Certificate of Coverage ends during the Duration of the Work, the Contractor must, prior to the end of the Coverage period, file a new Certificate of Coverage with the Owner showing that Coverage has been extended.
- e. The Contractor shall obtain from each person providing services in relation to the Work, and provide to the Owner:
  - (1) a Certificate of Coverage, prior to that person beginning any of the Work, so the Owner will have on file Certificates of Coverage showing Coverage for all persons providing services in relation to the Work; and
  - (2) no later than seven days after receipt by the Contractor, a new Certificate of Coverage showing extension of Coverage, if the Coverage period shown on the current Certificate of Coverage ends during the Duration of the Work.
- f. The Contractor shall retain all required Certificates of Coverage for the Duration of the Work and for one year thereafter.
- g. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of Coverage of any person providing services in relation to the Work.
- h. The Contractor shall post on the Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services in relation to the Work that they are required to be covered, and stating how a person may verify Coverage and report lack of Coverage.
- i. By signing this Agreement or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services in relation to the Work and all persons providing services in relation to the Work will be covered by workers' compensation coverage for the Duration of the Work, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- j. The Contractor's failure to comply with any of these provisions is a breach of Agreement by the Contractor which entitles the Owner to declare the Agreement void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

**8.1.5** The furnishing of the above listed insurance coverage must be tendered prior to execution of the Agreement, and in no event later than ten (10) calendar days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.

**8.1.6** The Contractor shall not cause or allow any of its required insurance to be canceled, nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Contractor fails to obtain, maintain or renew any insurance required by this Agreement, the Owner may, among other remedies available hereunder or at law, obtain insurance coverage directly and recover the cost of that insurance from the Contractor or

declare this Agreement void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

**8.1.7** The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**8.1.8** The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

**8.1.9** Contractor shall be responsible for payment of premiums for all of the insurance coverages required under this Agreement. Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Contractor is responsible hereunder, Contractor shall be solely responsible for all deductibles and self-insured retentions. **Any deductibles or self-insured retentions over \$50,000 in the Contractor's insurance must be declared and approved in writing by Owner in advance.**

**8.1.10** The Contractor shall contractually require each person or entity with whom it contracts to provide services in relation to the Work, to comply with each and every insurance requirement that Contractor must comply with hereunder. More specifically, each person or entity with whom Contractor contracts to provide services on the in relation to the Work must comply with each insurance requirement under this Article 8 just as if such person or entity was the Contractor. Thus, every reference to Contractor under each insurance requirement of this Article 8 shall mean and include each person or entity with whom Contractor contracts to provide services in relation to the Work. If any such person or entity with whom Contractor contracts to provide services in relation to the Work fails to obtain, maintain or renew any insurance required by this Agreement, the Owner may, among other remedies available hereunder or at law, obtain insurance coverage directly and recover the cost of that insurance from the Contractor or declare this Agreement void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

## **8.2 INDEMNITY.**

**8.2.1 INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF OWNER'S CHOOSING), AND HOLD HARMLESS OWNER, AND OWNER'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES' GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF THE CONTRACTOR, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE WORK SITE OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK. CONTRACTOR HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.**

**8.2.2 INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF OWNER'S CHOOSING), AND HOLD HARMLESS OWNER, AND OWNER'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE WORK DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.**

**8.3** Except for the obligation of Owner to pay Contractor the Contract Price pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

## ARTICLE 9 BONDS

**9.1 Performance Bond.** Upon execution of this Agreement, Contractor shall provide a Performance Bond in the amount of 100% of the Contract Price. The surety for a Performance Bond shall meet the requirements of Texas law.

**9.2 Payment Bond.** Upon execution of this Agreement, Contractor shall provide a Payment Bond in the amount of 100% of the Contract Price, as security for the true and faithful payment in full of all subcontractors and persons performing labor, services, materials, machinery, and fixtures in connection with the Work. The surety for a Payment Bond shall meet the requirements of Texas law.

**9.3 Warranty Bond.** Upon execution of this Agreement, Contractor shall provide a Warranty Bond in the amount of 20% of the Contract Price, as security for the true and faithful performance of all warranties set forth in Bid Documents and this Agreement.

## ARTICLE 10 TERMINATION

**10.1 Termination for Cause.** If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach is cured within three (3) business days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within three (3) business days, then and in that instance, the three (3) business day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within three (3) business days or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies available hereunder and under the law, terminate this Agreement.

**10.2 Termination for Convenience.** The Owner may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to Contractor. In the event of such termination, it is understood and agreed that only the amounts due to 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 Owner's termination of this Agreement for convenience.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

**11.1 Interest and Late Payments.** Except as otherwise specifically set forth herein, Owner's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Interest charges for any overdue payments shall be paid by Owner 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 Owner'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/application for payment submitted by Contractor, Owner shall notify Contractor of the error not later than the twenty first (21<sup>st</sup>) day after the date Owner receives the invoice/application for payment. If the error is resolved in favor of Contractor, Contractor shall be entitled to receive interest on the unpaid balance of the invoice/application for payment submitted by Contractor beginning on the date that the payment for the invoice/application for payment became overdue. If the error is resolved in favor of the Owner, Contractor shall submit a corrected invoice/application for payment 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/application for payment is not paid by the appropriate date.

**11.2 Assignment; Successors and Assigns.** This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

**11.3 Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**11.4 Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Williamson County where the Work site is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the project in which the Owner is a party.

**11.5 Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

**11.6 Interpretation.** In the event of any dispute over the meaning or application of any provision of the Contract Documents, the Contract Documents shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of the Contract Documents.

**11.7 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

**11.8 Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

**11.9 Audits.** Contractor agrees that Owner 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 agrees that Owner 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. Owner shall give Contractor reasonable advance notice of intended audits.

**11.10 Severability.** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

**11.11 No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Owner, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Owner 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.

**11.12 Current Revenues.** Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

**11.13 Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or

tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**11.14 Sales and Use Tax Exemption.** Owner is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. § 151.309, as amended.

**11.15 Texas Public Information Act.** To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Owner, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any information or data furnished to Owner whether or not the same are available to the public. It is further understood that Owner, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Owner, its officers and employees shall have no liability or obligation to Contractor for the disclosure to the public, or to any person or persons, of any software or a part thereof, or other items or data furnished to Owner by Contractor in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**11.16 Force Majeure.** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

**11.17 Equal Opportunity in Employment.** The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**11.18 Reports of Accidents.** Within 24 hours after Contractor becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Contractor), whether or not it results from or involves any action or failure to act by the Contractor or any employee or agent of the Contractor and which arises in any manner from the performance of this Agreement, the Contractor shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Contractor shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Contractor, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Contractor's performance of work under this Agreement.

**11.19 Relationship of the Parties.** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**11.20 Appropriation of Funds by Owner.** Owner believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Contractor understands and agrees that the Owner's payment of amounts under this Agreement is contingent on the Owner receiving appropriations or other expenditure authority sufficient to allow the Owner, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.



**11.21 Execution in Counterparts.** This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

**11.22 Entire Agreement.** This Agreement, which expressly includes Invitation for Bid #14IFB00244, Standard Terms & Conditions, and Contractor's Bid as if copied here in full, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE OWNER HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement to be effective as of the date of the last party's execution hereof (Effective Date).

**OWNER:**

WILLIAMSON COUNTY, TEXAS,  
a political subdivision of the state of Texas

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Party Representatives**

Owner's Designated Representative ("ODR"):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_  
Fax \_\_\_\_\_

Contractor's Designated Representative:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_  
Fax \_\_\_\_\_