

Contract No. SH195 Utility Coordination



PROFESSIONAL SERVICES AGREEMENT

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STATE OF TEXAS §
COUNTY OF WILLIAMSON §

WHEREAS, *County* proposes to construct a SH 195;

WHEREAS, **County** desires to obtain professional services for __ Utility Coordination on behalf of TxDOT _____ (*the "Project"*);

NOW, THEREFORE, *County* and *Utility Coordinator* agree to the performance of the professional services by *Utility Coordinator* and the payment for these services by *County* as set forth herein.

County agrees to employ *Utility Coordinator* and *Utility Coordinator* agrees to perform professional utility coordination services for the *Project* as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the County Judge or his designee and/or agent as designated in the Scope of Services in Appendix A, or as otherwise designated (*individually or collectively the "County Judge"*). The *County Judge* shall have complete authority for the purpose of resolving technical matters. In all other cases, the decision of the Williamson County Commissioners Court shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

A. In consideration of the compensation herein provided, ***Utility Coordinator*** shall perform professional utility coordination services for the ***Project***, which are acceptable to the ***County Judge***, based on standard utility coordination practices and the scope of work described on the Exhibits attached to this Agreement. ***Utility Coordinator*** shall also serve as ***County's*** professional Utility Coordinator in those phases of the ***Project*** to which this Agreement applies and will consult with and give advice to ***County*** during the performance of ***Utility Coordinator's*** services.

B. ***Utility Coordinator*** shall not commence work until ***Utility Coordinator*** has been thoroughly

briefed on the scope of the ***Project*** and has been notified in writing by the ***County Judge*** to proceed, as evidenced by a Work Authorization substantially in the form of Attachment A to Exhibit I.

- C. **County** shall provide **Utility Coordinator** with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular **Project** at no cost to **Utility Coordinator**; however, any and all such information shall remain the property of **County** and shall be returned, if the **County Judge** so instructs **Utility Coordinator**.
- D. **Utility Coordinator** shall perform the following Basic Scope of Services:
1. The basic Scope of Services shall generally consist of all elements of work, materials and equipment required for the development of the **Project**, including any Public Hearings, satisfactory to the **County Judge** and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Williamson County.
 2. The following documents shall be used in the development of the **Project**:
 - a. TxDOT 2003 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions
 - b. Texas Department of Transportation Construction Manual, latest edition
 - c. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2004 (English units)
 - d. National Environmental Policy Act (NEPA)
 - e. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions
 - f. Americans with Disabilities Act (ADA) Regulations
 - g. U.S. Army Corps Regulations
 - h. Southern Building Code, latest edition
 - i. Uniform Building Code. Note: Williamson County will use the 1997 Uniform Building Code (May 1, 1997), including latest revisions, as a guide for design.
 - j. National Electrical Code, latest edition
 - k. Williamson County Design Criteria & Project Development Manual, latest edition
 - l. TxDOT Bridge Division Foundation Manual, latest edition
 3. Design Criteria Order of Precedence: Design Criteria for the **Project** development shall be according to the following descending order of precedence: Williamson County Design Criteria, Texas Department of Transportation Standards and Specifications, local City standards and specifications.
 4. As part of the Scope of Services, **Utility Coordinator** shall submit its work products to **County** for review at regular intervals.
 5. The detailed Scope of Services for the **Project** is set forth herein as Appendix A to this Agreement, and is expressly incorporated and made a part hereof.

Section III

Fee schedule

- A. For and in consideration of the performance by **Utility Coordinator** of the work described in the Scope of Services, **County** shall pay and **Utility Coordinator** shall receive the fee set forth in Exhibit I. The fee is based upon the hourly rates set forth in Exhibit II. Exhibits I and II are attached hereto and made a part hereof. Invoices shall be submitted by **Utility Coordinator** on a monthly basis and are due upon presentation of all items required hereunder, and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- B. For the performance of services not specifically described in the Scope of Services **Utility Coordinator** shall receive the additional services compensation described in Exhibit III, which is attached hereto and made a part hereof. In the event of any dispute over the classification of **Utility Coordinator's** services as basic or additional services under this agreement, the decision of the **County Judge** shall be final and binding on **Utility Coordinator**.

Section IV Period of Service

- A. **Utility Coordinator** shall perform the professional services described in Appendix A, the Scope of Services, in accordance with the Production Schedule attached hereto as Exhibit IV and made a part hereof.
- B. This Agreement shall become effective upon the date approved by **County** and will remain in full force and effect for the period required for the design, construction contract award and construction of the **Project**, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. **Utility Coordinator** shall complete all design work as described in the Scope of Services within 1000 calendar days from receipt by **Utility Coordinator** of **County's** written Work Authorization and in accordance with the production timeline included in the Scope of Services. ✓
- C. Neither **Utility Coordinator** nor **County** shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond **Utility Coordinator's** or **County's** reasonable control. Upon the discovery of such an event, **Utility Coordinator** shall notify **County**, and attend a special meeting with the **County Judge** to propose a program for a solution to the problem, and, if necessary, to establish an estimated period of time of suspension or extension of the work. A written request for an extension of time, when properly documented and justified by the circumstances, will be granted by the **County Judge**.
- D. **County** may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within sixty (60) days of receipt by **Utility Coordinator** of written Notice of Reinstatement from **County**. **Utility Coordinator**, upon receipt of a Notice of Suspension shall follow the procedures described in the attached Exhibit V, which is

attached hereto and made a part hereof. In the event such suspension of the **Project** or the **Utility Coordinator's** services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, **Utility Coordinator** may terminate this Agreement in writing and such termination shall be treated as a Notice of Termination as provided herein.

- E. Either party may terminate this Agreement for the substantial failure of the other party to perform in accordance with the terms of this Agreement (the substantiality of such failure to be based on standard utility coordination practices and the scope of work described on the Exhibits attached to this Agreement), through no material fault of the terminating party. **County** may unilaterally terminate this Agreement for reasons other than substantial failure by **Utility Coordinator** to perform by delivering a written Notice of Termination which shall take effect on the tenth day following **Utility Coordinator's** receipt of same. If mutually agreed upon, the obligation to provide services under this Agreement may be terminated without cause upon thirty (30) days written notice. **Utility Coordinator** shall follow the procedures specified in Exhibit V upon issuance or receipt of such notice. In the event of termination of this Agreement because of the substantial failure of **Utility Coordinator** to perform, **County** may prosecute the work to completion by contract or otherwise and, in such a case, **Utility Coordinator** shall be liable for any additional costs incurred by **County**.
- F. **Utility Coordinator** specifically acknowledges that **County** will sustain damages for each day beyond the required dates of completion of the Preliminary and Design Phases as defined in the Scope of Services that the work has not been accepted and approved. Because of the impracticality and extreme difficulty of fixing and ascertaining **County's** actual damages, **Utility Coordinator** agrees that one-hundred and No/100 Dollars (\$100.00) per day shall be retained by **County** from any amounts due **Utility Coordinator** for every day that **Utility Coordinator** does not meet the production requirements set forth in Exhibit IV. ✓
- G. Periods of time (i) during which a Notice of Suspension is in effect, or (ii) during which a submitted and complete utility coordination work product is in technical review, as described in Section VI, or (iii) during which a delay directly related to matters described in section IV(C) above, shall not be taken into account in computing the amount of liquidated damages. In the event that an utility coordination work product received by **County** is found to be incomplete, as defined in Section VI, Paragraph B, the period of time from the original submittal of the utility coordination work product to the receipt of subsequent submittal necessary to produce a completed submittal will be taken into account in computing the number of days and the amount of liquidated damages
- H. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

Section V Coordination with the County

- A. The **County Judge** will act on behalf of **County** with respect to the work to be performed under this Agreement. The **County Judge** shall have complete authority to interpret and define **County's** policies and decisions with respect to **Utility Coordinator's** services. The

County Judge may designate representatives to transmit instructions and receive information.

- B. **Utility Coordinator** shall not commence work on any phase of the **Project** until a thorough briefing on the scope of the **Project** is received and a written Work Authorization is issued by the **County Judge** in substantially the form of Attachment A to Exhibit I.
- C. **Utility Coordinator** shall furnish all available data and reasonable assistance necessary for the development of applications or supporting documentation for any permits, grants, or planning advances as applicable to the professional services to be rendered pursuant to this Agreement, provided that **Utility Coordinator** shall not be obligated to develop additional data, appear at hearings, or prepare extensive reports, unless compensated for such work under other provisions of this Agreement.
- D. **Utility Coordinator** shall have the responsibility at all times under the terms of this Agreement to advise **County** whether in **Utility Coordinator's** judgment it is feasible to proceed with the recommendations given any constraints affecting the **Project**.
- E. **Utility Coordinator** shall cooperate and coordinate with **County's** staff, and other utility coordinators, engineers and contractors as reasonable and necessary and as required by the **County Judge**.

Section VI

Review of Work Product

- A. **Utility Coordinator's** utility coordination work product will be reviewed by **County** under its applicable technical requirements and procedures.
- B. Reports, plans, specifications, and supporting documents, (the "utility coordination work products"), shall be submitted by **Utility Coordinator** on or before the dates specified in the Production Schedule set forth in Exhibit IV. Upon receipt of the utility coordination work products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the scope of services described herein) have been included in the utility coordination work products in compliance with the requirements of this Agreement. The completeness of any utility coordination work product submitted to **County** shall be determined by **County** within thirty (30) days of such submittal and **County** shall notify **Utility Coordinator** in writing within such 30-day period if such work product has been found to be incomplete.
- C. If the submission is complete, **County** shall notify **Utility Coordinator** and **County's** technical review process will begin.
- D. If the submission is incomplete, **County** shall notify **Utility Coordinator**, who shall perform such professional services as are required to complete the work and resubmit it to **County**. This process shall be repeated until a submission is complete.
- E. **County** shall review the completed work for compliance with the scope of work. If

necessary, the completed work shall be returned to **Utility Coordinator**, who shall perform any required work and resubmit it to **County**. This process shall be repeated until the work is accepted. "Acceptance" shall mean that in the **County Judge's** opinion substantial compliance with the requirements of this Agreement has been achieved.

- F. After acceptance, **Utility Coordinator** shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive final approval by the **County Judge**. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.
- G. After approval of final utility coordination work products, **Utility Coordinator** shall without additional compensation perform any work required as a result of **Utility Coordinator's** development of the products which is found to be in error or omission due to **Utility Coordinator's** negligence. However, any work required or occasioned for the convenience of **County** after approval of a final product shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of **Utility Coordinator's** work products as complete, accepted, or approved under this Agreement, the decision of the **County Judge** shall be final and binding on **Utility Coordinator**, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VII Revision to Work Product

Utility Coordinator shall make without expense to **County** such revisions to the work product as may be required to correct negligent errors or omissions so the work product meets the needs of **County**, but after the approval of the work product any revisions, additions, or other modifications made at **County's** request which involve extra services and expenses to **Utility Coordinator** shall entitle **Utility Coordinator** to additional compensation for such extra services and expenses, provided however, that **Utility Coordinator** agrees to perform any necessary corrections to the work products, which are found to be in negligent error or omission as a result of the **Utility Coordinator's** development of the work product, at any time, without additional compensation. If it is necessary due to such error or omission by **Utility Coordinator** to revise the plans in order to make the **Project** constructible, **Utility Coordinator** shall do so without additional compensation. In the event of any dispute over the classification of **Utility Coordinator's** services as Basic or Additional Services under this Agreement, the decision of the **County Judge** shall be final and binding on **Utility Coordinator**, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VIII Utility Coordinator's Responsibility and Liability

- A. **Utility Coordinator** covenants to undertake no task in which a professional license or certificate is required unless he or someone under his direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, **Utility Coordinator** shall inform **County** of such event within five working days.

- B. *Utility Coordinator* shall be responsible for conformance with applicable federal and state laws, county permitting requirements, and city ordinances currently in effect, except as otherwise directed by the *County Judge* regarding county permitting or similar requirements properly waivable by the *County Judge*.
- C. Acceptance and approval of the final plans by *County* shall not release *Utility Coordinator* of any responsibility or liability for the accuracy and competency of his designs, working drawings, specifications, or other documents or work performed under this Agreement. Neither acceptance nor approval by *County* shall be an assumption of responsibility or liability by *County* for any defect, error, or omission in the designs, working drawings, specifications, or other documents prepared by *Utility Coordinator*.
- D. **UTILITY COORDINATOR SHALL INDEMNIFY, PROTECT, AND SAVE HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF UTILITY COORDINATOR OR ANY OF ITS SUBCONTRACTORS IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT; PROVIDED, HOWEVER, UTILITY COORDINATOR SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENCE OF ANY OTHER PARTY, OTHER THAN ITS SUBCONTRACTORS.**
- E. *Utility Coordinator's* opinions of probable *Project* cost or construction cost represent *Utility Coordinator's* professional judgment as a design professional familiar with the construction industry, but *Utility Coordinator* does not guarantee that proposals, bids, or the construction cost, itself, will not vary from *Utility Coordinator's* opinions of probable cost.
- F. *Utility Coordinator* shall perform all services and responsibilities required of a *Utility Coordinator* under this Agreement using at least that standard of care which a reasonably prudent utility coordinator in Texas, or the State Board of Registered Professional Surveyors, as applicable, would use in similar circumstances.
- G. *Utility Coordinator* represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for performance of the services required under this Agreement and that *Utility Coordinator* shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the reasonable opinion of *County*, to perform the services when and as required and without delays. It is understood that *County* will approve assignment and release of all key *Utility Coordinator* and professional personnel.
- H. All employees of *Utility Coordinator* shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of *Utility Coordinator*, who in the opinion of *County* is incompetent or whose conduct becomes detrimental to the

work or coordination with **County**, shall upon **County's** and/or **County Judge's** request be immediately removed from association with the **Project**.

- I. **Utility Coordinator** shall furnish all equipment, transportation, supplies, and materials required for its operations under this Agreement.
- J. **Engineer** shall place his Texas Professional Engineer's seal of endorsement on all documents and engineering data furnished to **County**, as required by law.
- K. **Utility Coordinator** is an independent contractor under this Agreement. Neither he nor any officer, agent or employee of **Utility Coordinator** shall be classified as an employee of **County**.

Section IX Ownership of Documents

- A. Any and all documents, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by **Utility Coordinator** are the property of **County** and upon completion of the work or termination of this Agreement or as otherwise instructed by **County** and/or **County Judge**, shall be delivered to **County** in an organized fashion with **Utility Coordinator** retaining a copy.
- B. Any reuse by **Utility Coordinator** of any such documents described in subsection A above, without the specific written consent of **County** shall be at **Utility Coordinator's** sole risk and without liability or legal exposure to **County**. Should **Utility Coordinator** be terminated, **Utility Coordinator** shall not be liable for **County's** use of partially completed designs, plans, or specifications on this **Project** or any other project, except to the extent such documents were deemed complete or otherwise "Accepted" or "Approved" as provided herein or represent completed work sealed by **Utility Coordinator**, or Surveyor, as applicable, as specified by professional standards.
- C. **Utility Coordinator** will not be responsible for any use or any modifications to the plans and documents described in subsection A performed by any entity other than Williamson County, and **County's** respective Utility Coordinators and contractors, without the specific written consent of **Utility Coordinator**. Any modification as described in this paragraph shall be made in accordance with all applicable professional standards.

Section X Maintenance of and Right of Access to Records

- A. **Utility Coordinator** agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the **Project**, together with documentation of evaluations and study results for a period of three (3) years after final payment for completed services and all other pending matters concerning this Agreement have been closed.

- B. **Utility Coordinator** further agrees that **County** or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of **Utility Coordinator**, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. **Utility Coordinator** agrees that **County** shall have access during normal working hours to all necessary **Utility Coordinator** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. **County** shall give **Utility Coordinator** reasonable advance notice of intended audits.
- C. **Utility Coordinator** further agrees to include in all its sub-consultant agreements hereunder a provision to the effect that the sub-consultant agrees that **County** shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such sub-consultant, involving transactions to the subcontract, and further, that **County** shall have access during normal working hours to all sub-consultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (D) hereof. **County** shall give sub-consultant reasonable advance notice of intended audits.
- D. **Utility Coordinator** and sub-consultant agree to photocopy such documents as may be requested by **County**. **County** agrees to reimburse **Utility Coordinator** for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

Section XI

Miscellaneous

- A. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire 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 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 Agreement and be deemed to be validated and enforceable.
- B. **Venue and Governing Law.** It is contemplated that this Agreement shall be performed in Williamson County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- C. **Equal Opportunity in Employment.** **Utility Coordinator** agrees, during the performance of

the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit VI, which is attached hereto and made a part hereof.

D. **Certificate of Utility Coordinator.** *Utility Coordinator* certifies that neither *Utility Coordinator* nor any members of *Utility Coordinator's* firm has:

- (1) Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bona fide employee working solely for *Utility Coordinator*) to solicit or secure the work provided by the Agreement.
- (2) Agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
- (3) Paid or agreed to pay to any firm, organization, or person (other than bona fide employees working solely for *Utility Coordinator*) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.

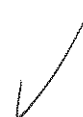
Utility Coordinator further agrees that this certification may be furnished to any local, state or federal governmental agencies in connection with this Agreement and for those portions of the **Project** involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.

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

UTILITY:

COORDINATOR

____ Mike Springfield ____
____ 8000 Centre Park, Ste. 370 ____
____ Austin, Tx. 78758 ____



COUNTY:

Williamson County Judge
Dan A. Gattis (or successor)
710 Main Street, Ste. 101
Georgetown, Texas 78626

with copy to:

Williamson County Attorney
Jana Duty (or successor)
405 M.L.K. St., Box #7
Georgetown, Texas 78626
Attn: File No. _____

and to:

Prime Strategies, Inc.
1508 South Lamar Blvd.

Austin, Texas 78704
Attn: Michael Weaver

and to: HNTB
14 Galloping Road
Round Rock, Texas 78681
Attn: James Klotz, P.E.

and to: _____

- F. **Insurance Requirements.** *Utility Coordinator* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VII, which is attached hereto and made a part hereof.
- G. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent *County* becomes aware that *Utility Coordinator* is delinquent in the payment of property taxes related to property located in Williamson County at the time of invoicing, *Utility Coordinator* hereby assigns any payments to be made for services rendered hereunder to the Williamson County Tax Assessor-Collector for the payment of said delinquent taxes. Notwithstanding the above, *County* shall not have an affirmative duty to determine if *Utility Coordinator* is delinquent in the payment of property taxes.
- H. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of *County* and *Utility Coordinator* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Utility Coordinator* may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- I. **Bidding Exemption.** This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.
- J. **Taxpayer Identification.** *Utility Coordinator* shall provide to *County Judge* upon submittal of *Utility Coordinator's* initial invoice requesting payment Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations.
- K. **Compliance with Laws.** *Utility Coordinator* 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, the *Utility Coordinator* shall furnish the *County* with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

- L. **Reports of Accidents.** Within 24 hours after **Utility Coordinator** 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 **Utility Coordinator**), whether or not it results from or involves any action or failure to act by the **Utility Coordinator** or any employee or agent of the **Utility Coordinator** and which arises in any manner from the performance of this Agreement, the **Utility Coordinator** 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 **Utility Coordinator** shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the **Utility Coordinator**, 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 **Utility Coordinator's** performance of work under this Agreement.
- M. **Definition of Utility Coordinator.** The term "**Utility Coordinator**" as used herein is defined as including Registered Professional Surveyors, as applicable to the work to be performed under this Agreement, and any reference to professional standards in regards to a Registered Professional Surveyor shall relate to those standards promulgated by the State Board of Registered Professional Surveyors.
- N. **Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.
- O. **Incorporation of Exhibits and Attachments.** All of the Exhibits and Attachments, and Appendices referred to in the Agreement are incorporated by reference as if set forth verbatim herein.
- P. **Entity Status.** By my signature below, I certify that **Utility Coordinator** is a Corporation, duly authorized to transact and do business in the State of Texas. ✓
- Q. **Construction.** Each party hereto acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.
- R. **Independent Contractor Relationship.** Both parties hereto, 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.
- S. **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 **County**, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. **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.

- T. **Interest and Late Payments.** **County's** payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by **County** within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late 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 a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, **County** shall notify the party requesting payment of such an invoice of the discrepancy. Following **County's** notification of any discrepancy as to an invoice, the party requesting payment must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. **County** shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. **County's** payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.
- U. **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 **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 **County** as to whether or not the same are available to the public. It is further understood that **County's** officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that **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 **County** by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- V. **Acknowledgement.** As a duly authorized representative of **Utility Coordinator**, I acknowledge by my signature below that I have read and understand the above paragraphs and that **Utility Coordinator** has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.
- W. **Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms

and conditions set forth in Sections I. through XI. of this Agreement and the terms and conditions set forth in any Exhibit, Appendix or Attachment to this Agreement, the terms and conditions set forth in Sections I. through XI. of this Agreement shall control over the terms and conditions set forth in any Exhibit, Appendix or Attachment to this Agreement.

- X. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between **County** and **Utility Coordinator** and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both **County** and **Utility Coordinator**. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS COURT.

EXECUTED this 2nd day of December, 2008.

THE UTILITY COORDINATOR:

[Insert Company Name HERE]

BY: _____

Printed Name: DAVE CONGER

Title: VICE PRESIDENT

WILLIAMSON COUNTY:

BY: _____

Dan A. Gattis

Williamson County Judge

Reviewed as to Form By: _____

gk c. al
Assistant County Attorney

Funds Verified By: _____

gk
County Contracts
Management Auditor

OK
my 4/17/08

EXHIBIT I

COMPENSATION FOR PROFESSIONAL SERVICES

ACTUAL COST OF SERVICES METHOD

[Note: A separate Compensation Agreement will be attached for Compensation on a Work-Order Basis]

SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The not-to-be-exceeded fee for the performance of the Scope of Services described in the Agreement shall be the sum of \$ 1,500,000.00.
- 1.2 The basis of compensation for the services of principals and employees engaged in the performance of the work shall be the hourly rates set forth in attached Exhibit II.
- 1.3 **Utility Coordinator** shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement at the **Utility Coordinator's** invoice cost.

SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 **Utility Coordinator** and **County** acknowledge the fact that the not-to-be-exceeded fee is the total estimated costs of services to be rendered under this Agreement. This not-to-be-exceeded fee is based upon the labor and non-labor costs set forth in Exhibit II to this Agreement and described above, estimated to be required in the performance of the various phases of work provided for under this Agreement. Should the actual costs of the services rendered under this Agreement be less than such estimated cost, then **Utility Coordinator** shall receive compensation for only those services actually rendered.

SECTION 3 – WORK AUTHORIZATIONS

- 3.1 **County** will prepare and issue Work Authorizations, in the form identified and attached hereto as Attachment A to authorize the **Utility Coordinator** to perform one or more tasks. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, and a fee amount agreed upon by the **County** and **Utility Coordinator**. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the **Utility Coordinator's** responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.
- 3.2 Work included in a Work Authorization shall not begin until **County** and **Utility Coordinator** have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization. The **Utility Coordinator** shall

promptly notify the **County** of any event which will affect completion of the Work Authorization, although such notification shall not relieve the **Utility Coordinator** from costs or liabilities resulting from delays in completion of the Work Authorization. Any changes in the Work Authorization shall be enacted by a written Supplemental Work Authorization before additional work may be performed or additional costs incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization. The **Utility Coordinator** shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a Supplemental Work Authorization.

SECTION 4 - ADDITIONAL SERVICES

- 4.1 For additional services, compensation shall be negotiated in accordance with Exhibit III.
- 4.2 **Utility Coordinator** shall be compensated for extra services not included in the Scope of Services described in the Agreement on the basis specified in Exhibit III; however, **Utility Coordinator** shall not be compensated for work made necessary by **Utility Coordinator's** negligent errors or omissions.
- 4.3 The maximum amount payable under this Agreement without modification (the "**Compensation Cap**") is \$ 1,500,000.00, provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the **Compensation Cap**.

SECTION 5 – REQUIRED SUPPORTING DOCUMENTATION

- 5.1 Upon submittal of the initial invoice for service, **Utility Coordinator** shall provide **County Judge** with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.
- 5.2 All invoices submitted to **County Judge** will be accompanied by an original, complete packet of supporting documentation. Invoices should detail hours worked by staff person, with a description of the work performed by individuals. Invoices should also contain a representation of the percentage of completion relative to that segment of the **Project**.
- 5.3 For additional services performed pursuant to Section III B of this Agreement, a separate invoice or itemization of this work will be presented with the same requirements for supporting documentation as in Section 5.2 of this Exhibit.
- 5.4 Invoices requesting reimbursement for expenditures related to the project (reimbursables) must be accompanied by copies of the provider's invoice which was previously paid by **Utility Coordinator**.

ATTACHMENT A

WORK AUTHORIZATION NO. EXAMPLE

This Work Authorization is made pursuant to the terms and conditions of the Agreement entered into by and between Williamson County, Texas, a political subdivision of the State of Texas, (*the "County"*) and _____ (*the "Utility Coordinator"*).

Part 1. The *Utility Coordinator* will provide the following utility coordination services:

This is an example of the template to be used in the performance of this contract.

Part 2. The maximum amount payable for services under this Work Authorization without modification is _____.

Part 3. Payment to the *Utility Coordinator* for the services established under this Work Authorization shall be made in accordance with the Agreement.

Part 4. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on _____, unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

Part 6. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this ____ day of _____, 200__.

UTILITY COORDINATOR:
[Insert Company Name HERE]

COUNTY:
Williamson County, Texas

By: _____
Signature

By: _____
Signature

Printed Name

Dan A. Gattis
Printed Name

Title

County Judge
Title

SAMPLE

LIST OF EXHIBITS

Exhibit A - Services to be Provided by County

Exhibit B - Services to be Provided by Utility Coordinator

Exhibit C - Work Schedule

Exhibit D - Fee Schedule

EXHIBIT II

HOURLY RATES

1. Senior Utility Coordinator.....\$_____

2. Graduate Utility Coordinator.....\$_____

3. Technician.....\$_____

4. Secretary/Clerical.....\$_____

5. Expert Witness Testimony.....\$_____

Cobb, Fendley & Associates, Inc.
2008 STANDARD RATE SCHEDULE #277
December 1, 2008 – December 31, 2009 **

Project Manager	\$135.00/HR
Project Engineer III	\$130.00/HR
Project Engineer II	\$115.00/HR
Project Engineer I	\$95.00/HR
Senior Engineer	\$165.00/HR
Senior Hydrologist	\$150.00/HR
Senior Technician	\$115.00/HR
Technician III	\$95.00/HR
Technician II	\$85.00/HR
Technician I	\$75.00/HR
Licensed State Land Surveyor	\$170.00/HR
Registered Professional Land Surveyor	\$112.00/HR
4- Man Survey Crew	\$148.00/HR
3- Man Survey Crew	\$132.00/HR
2- Man Survey Crew	\$115.00/HR
Construction Manager	\$120.00/HR
Field Construction Observer	\$80.00/HR
Utility Specialist	\$105.00/HR
Telecommunications Designer	\$78.00/HR
Telecommunications Fieldman	\$66.00/HR
GIS Manager	\$125.00/HR
GIS Analyst	\$90.00/HR
Post Processing GPS Data	\$92.00/HR
Right-of-Way Agent	\$100.00/HR
Clerical	\$60.00/HR
GPS	\$32.00/HR/Receiver

Cobb, Fendley & Associates, Inc.
2008 STANDARD RATE SCHEDULE #277
 December 1, 2008 – December 31, 2009 *
 (Continued)

SUBSURFACE UTILITY ENGINEERING

Level C & D (Without Level B)	\$0.37/Foot
Level B – Designation (Without Level C & D)	\$1.35/Foot
Level A – Location (Non-Destructive Excavation):	
➤ Vertical Depth: 0 Ft. – 5 Ft.	\$1,075/Hole
5 Ft. – 8 Ft.	\$1,390/Hole
8 Ft. – 13 Ft.	\$1,680/Hole
13 Ft. – 20 Ft.	\$2,420/Hole
> 20 Ft.	\$3,450/Hole
Ground Penetrating Radar	To Be Negotiated
SUE Technician (With Equipment)	\$90/HR
Locating (With Equipment & Two (2) Technicians)	\$315/HR
Traffic Control Officer	@ Cost
Traffic Control (Lane Closures, etc.)	To Be Negotiated
Permits (Local, State, etc.)	@ Cost
Designation & Traffic Control Vehicles	\$3.30/Mile
Location Vehicles	\$6.50/Mile

REIMBURSABLE EXPENSES

Consultant or Specialty Contractor (Outside Firm)	@ Cost
Courier, Special Equipment Rental	@ Cost
Reasonable Out of Town Travel Expenses (Air, Hotel, Rental, etc.)	@ Cost
Mileage (Standard Car or Truck)	IRS Approved Rate
Per Diem for Out of Town Travel (Per Day/Person)	\$35/Day
Title Plant Charges	@ Cost
Other Misc. Expenses Related to the Project	@ Cost
In-House Reproduction:	
➤ Copies (Up to 11" x 17")	\$0.15/Each
➤ Color Prints (Up to 11" x 17")	\$1.50/Each
➤ Color Prints (Larger than 11" x 17")	\$3.00/Sq. Ft.
➤ Bluelines (All Sizes)	\$1.00/Each
➤ Bond Prints (All Sizes)	\$2.00/Each
➤ Mylar Prints	\$12.00/Each
➤ Vellum Prints	\$9.00/Each

(*) Hourly Rates shall increase by 3% for the calendar year beginning January 1, 2010 and shall increase by 3% for each successive calendar year thereafter on January 1st.

EXHIBIT III

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

1. The fees described in Exhibits I and II to this Agreement shall provide compensation to ***Utility Coordinator*** for the work described in the Basic Scope of Services of the Agreement.
2. For the performance of work not described in the Basic Scope of Services of the Agreement, ***County*** shall pay and ***Utility Coordinator*** shall receive, under a negotiated contract modification, compensation based upon the method and rates set forth in Exhibits I and II to the Agreement.
3. The performance of any additional services must be authorized in writing in advance by the ***County Judge***.
4. In the event of any dispute over the classification of ***Utility Coordinator's*** services as either basic or additional services, the decision of the ***County Judge*** shall be final and binding.

EXHIBIT IV

PRODUCTION SCHEDULE

This Agreement shall become effective upon the date approved by **County** and will remain in full force and effect for the period required for the design, construction contract award and construction of the **Project**, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. **Utility Coordinator** shall complete all design work as described in the Scope of Services within the timeline and/or schedule provided in the Scope of Services.

The number of days expiring from the date of submittal to **County** of a complete work product to the date the review is finished and comments returned to **Utility Coordinator** shall not be included within the days allowed for completion.

EXHIBIT V

PROCEDURES FOR TERMINATION OR SUSPENSION

Procedures for *Utility Coordinator* to follow upon receipt of Notice of Termination:

1. Upon receipt of a Notice of Termination and prior to the effective date of the termination, *Utility Coordinator* shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of the Notice of Termination, *Utility Coordinator* shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of termination shall be delivered to *County* as a pre-condition to final payment.
3. Upon the above conditions being met, *County* shall pay *Utility Coordinator* for approved services actually performed under this Agreement, less previous payments.
4. Failure by *Utility Coordinator* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Utility Coordinator* of any and all rights or claims to collect the fee that *Utility Coordinator* may rightfully be entitled to for services performed under this Agreement.

Procedures for *Utility Coordinator* to follow upon receipt of Notice of Suspension:

1. Upon receipt of a Notice of Suspension and prior to the effective date of the suspension, *Utility Coordinator* shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the effective date of suspension. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to *County*, but shall be retained by *Utility Coordinator* unless requested by *County*.
2. During the period of suspension, *Utility Coordinator* may submit the above-referenced statement to *County* for payment of the approved services actually performed under this Agreement, less previous payments.

Procedures for **Utility Coordinator** to follow upon exercise of right to terminate for substantial failure of **County** to perform:

1. In the event that **Utility Coordinator** exercises such right to terminate, within thirty (30) days after receipt by **County** of **Utility Coordinator's** Notice of Termination, **Utility Coordinator** shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed reports, designs, plans, studies, specifications and other work product shall be delivered to **County** as a pre-condition to final payment. Upon the above conditions being met, **County** shall pay **Utility Coordinator** for approved services actually performed under this Agreement, less previous payments.
3. Failure by **Utility Coordinator** to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by **Utility Coordinator** of any and all rights or claims to collect the fee that **Utility Coordinator** may rightfully be entitled to for services performed under this Agreement.

EXHIBIT VI

EQUAL OPPORTUNITY IN EMPLOYMENT

- A. **Utility Coordinator** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. **Utility Coordinator** 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. **Utility Coordinator** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. **Utility Coordinator** will, in all solicitations or advertisements for employees placed by or on behalf of **Utility Coordinator**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Utility Coordinator** will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of **Utility Coordinator's** obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. **Utility Coordinator** will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor. In the event that federal financial assistance is provided for the **Project**, **Utility Coordinator** shall comply with 49 CFR 26, TxDOT's Disadvantaged Business Enterprises Program and any Memorandum of Understanding between the **County** and TxDOT pertaining to such Disadvantaged Business Enterprise Program.
- E. **Utility Coordinator** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of **Utility Coordinator's** non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and **Utility Coordinator** may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. **Utility Coordinator** will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60), so that such provisions will be binding upon each subcontractor or vendor. **Utility Coordinator** will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance: provided, however, that in the event **Utility Coordinator** becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by **County** or Federal Agency, **Utility Coordinator** may request **County** and United States to enter into such litigation to protect the interest of the United States.

EXHIBIT VII

INSURANCE REQUIREMENTS

During the life of this Agreement, *Utility Coordinator* agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, including coverage on same for independent subcontractor(s). WILLIAMSON COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. *Utility Coordinator* shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$1,000,000.00.
- E. In the event *Utility Coordinator* is self-insured in connection with any or all of the above-required insurance policies, *Utility Coordinator* shall submit proof of such self-insurance and all financial statements as reasonably required by the *County* in order to determine the acceptability of such self-insurance.

Utility Coordinator shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance or self-insurance has been approved by *County*. *Utility Coordinator* shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved. Approval of the insurance by *County* shall not relieve or decrease the liability of *Utility Coordinator* hereunder.

The required insurance must be written by a company approved to do business in the State or 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. *Utility Coordinator* shall furnish *County* with a certification of coverage issued by the insurer. *Utility Coordinator* 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) 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 the *County Judge*, and agreed to and hereby acknowledged by the *Utility Coordinator*, that no provision of this Professional Services Agreement shall be construed to require the *County* or the *County Judge* 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 under this Exhibit 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 Agreement.

APPENDIX A

SCOPE OF SERVICES

THE ATTACHED SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE WILLIAMSON COUNTY PROFESSIONAL SERVICES AGREEMENT. TO THE EXTENT THE SCOPE IS INCONSISTENT WITH THE PROFESSIONAL SERVICES AGREEMENT, THE PROFESSIONAL SERVICES AGREEMENT WILL SUPERSEDE THE SCOPE AND WILL BE CONTROLLING.

THE UTILITY COORDINATOR SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE UTILITY COORDINATION PROFESSIONAL TO BE DETERMINED BY COUNTY AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN EXHIBIT II.

EXCEPT AS PROVIDED FOR FEE SERVICES OR WORK-ORDER BASED SERVICES, THE ATTACHED SCOPE OF SERVICES SHALL INCLUDE A PRODUCTION SCHEDULE REFLECTING A TIMELINE FOR THE EXECUTION OF THE PROJECT.

GENERAL DESCRIPTION OF SERVICES

Utility Design and Utility Coordination Activities

- Utility Research
- Mapping
- Meetings
- Utility Coordination
- Agreement Assemblies
- Planning and Design
- Subsurface Utility Engineering
- Utility Easement Document Preparation
- Utility Survey
- Utility Construction Management

SCOPE OF SERVICES FOR UTILITY COORDINATION & SUBSURFACE UTILITY ENGINEERING

Cobb, Fendley & Associates will perform these services to insure the most complete and cost effective services are undertaken.

1. Responsible Parties

- 1.1. **Utility Coordinator/Specialist (UC):** Herein referred to as the provider performing services in a non-engineering capacity.
- 1.2. **Utility Engineer:** Herein referred to as the provider performing services in a professional engineering capacity.

2. Utility Engineering Investigation (currently Subsurface Utility Engineering) including utility investigations subsurface and above ground prepared in accordance with AASHTO standards and Utility Quality Levels as follows.

2.1. Utility Quality Levels are defined in cumulative order (least to greatest) as follows:

- 2.1.1. Quality Level D - Existing Records: Utilities are plotted from review of available existing records.
- 2.1.2. Quality Level C - Surface Visible Feature Survey: Quality level "D" information from existing records is correlated with surveyed surface-visible features. Includes Quality Level D information.

- 2.1.3. Quality Level B - Designate: Two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control. Incorporates quality levels C and D information to produce Quality Level B.
- 2.1.4. Quality Level A - Locate (Test Hole): Three-dimensional mapping and other characterization data. This information is obtained through exposing utility facilities through test holes and measuring and recording (to appropriate survey control) utility/environment data. Incorporates quality levels B, C and D information to produce Quality Level A.
- 2.2 **Designate (Quality Level B), Designate means to indicate the horizontal location of underground utilities by the application and interpretation of appropriate non-destructive surface geophysical techniques and reference to established survey control. Designate (Quality Level B) Services are inclusive of Quality levels C and D.**

The UC shall:

- 2.2.1. Compile "As Built" information from plans, plats and other location data as provided by the utility owners.
- 2.2.2. Coordinate with utility owner when utility owner's policy is to designate their own facilities at no cost for preliminary survey purposes. The Engineer will examine utility owner's work to ensure accuracy and completeness.
- 2.2.3. Designate, record and mark the horizontal location of the existing utility facilities and their service laterals to existing buildings using non-destructive surface geophysical techniques. No storm sewer facilities are to be designated unless authorized by the County. A non-water base paint, utilizing the APWA color code scheme, must be used on all surface markings of underground utilities.
- 2.2.4. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. A color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations, if applicable will be prepared and delivered to the County. It is understood by both the Engineer and the County that the line sizes of designated utility facilities detailed on the deliverable are from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note must be placed on the designate deliverable only that states "lines sizes are from best available records". All above ground appurtenance locations must be included in the deliverable to the County. This information will be provided in Microstation, Geopak or applicable County/County's Design Consultant CADD system. The electronic file will be delivered on floppy disk or C.D. A hard copy is required and must be sealed and dated by the Engineer. When requested by the County, the designated utility information must be overlaid on the County design plans.

- 2.2.5. Determine and inform the County of the approximate utility depths at critical locations as determined by the County. This depth indication is understood by both the Engineer and the County to be approximate only and is not intended to be used preparing the right of way and construction plans.
- 2.2.6. When requested, provide a monthly summary of work completed and in process with adequate detail to verify compliance with agreed work schedule.
- 2.2.7. Provide an itemized bill on company letterhead including County issued work authorization number. The bill must clearly document whether it is a partial billing or a final billing. All billing statements must include the beginning and ending dates of work.
- 2.2.8. Close-out permits as required.
- 2.2.9. Clearly identify all utilities that were discovered from quality levels C and D investigation, but can not be depicted in quality level B standards. These utilities must have a unique line style and symbology in the designate (Quality Level B) deliverable.
- 2.2.10. Comply with all applicable State policy and procedural manuals.

2.3 Subsurface Utility Locate (Test Hole) Service (Quality Level A), Locate means to obtain precise horizontal and vertical position, material type, condition, size and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.

The UC shall:

- 2.3.1. Review requested test hole locations and advise the County in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.
- 2.3.2. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
- 2.3.3. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
- 2.3.4. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the Engineer:
- 2.3.5. Elevation of top and/or bottom of utility tied to the datum of the furnished plan.
- 2.3.6. Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
- 2.3.7. Elevation of existing grade over utility at test hole location.
- 2.3.8. Horizontal location referenced to project coordinate datum.
- 2.3.9. Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
- 2.3.10. Utility facility material(s).

- 2.3.11. Utility facility condition.
- 2.3.12. Pavement thickness and type.
- 2.3.13. Coating/Wrapping information and condition.
- 2.3.14. Unusual circumstances or field conditions.
- 2.3.15. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate County office.
- 2.3.16. Be responsible for any damage to the utility during the locating process. In the event of damage, the Engineer shall stop work, notify the appropriate utility facility owner, County Engineer, and appropriate regulatory agencies. The regulatory agencies include, but are not limited to the Texas Railroad Commission and the Texas Natural Resource Conservation Commission. The Engineer will not resume work until the utility facility owner has determined the corrective action to be taken. The Engineer shall be liable for all costs involved in the repair or replacement of the utility facility.
- 2.3.17. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The engineer shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
- 2.3.18. Furnish and install a permanent above ground marker (as specified by County Engineer), directly above center line of the utility facility.
- 2.3.19. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the Engineer shall return to correct the condition at no extra charge to the County.
- 2.3.20. Plot utility location position information to scale and provide a comprehensive utility plan sign and sealed by the responsible Engineer. This information will be provided in Microstation or Geopak format or applicable County/County's Design Consultant CADD system. The electronic file will be delivered on a floppy disk or C.D. When requested by the County, the Locate information must be overlaid on the County design plans.
- 2.3.21. Return plans, profiles, and test hole data sheets to the County. If requested, conduct a review of the findings with the County.
- 2.3.22. Close-out permits as required.

3. Utility Adjustment Coordination including utility coordination meetings with individual utility companies, communication and coordination with utilities, and preparation of utility assemblies including utility agreements, joint use agreements, and advanced funding agreements.

- 3.1. **The Utility Coordination Consultant (UC) shall perform utility coordination and liaison activities with involved utility owners, their consultants, County Engineers and County ROW Sections to achieve**

timely project notifications, formal coordination meetings, conflict analysis and resolution.

The UC shall be responsible for the following:

- 3.1.1 Work Plan. Coordinate a work plan including a list of the proposed meetings and coordination activities, and related tasks to be performed, a schedule and an estimate. The work plan must satisfy the requirements of the project and must be approved by the County prior to commencing work.
- 3.1.2 Initial Project Meeting. Attend an initial meeting and an on-site inspection (when appropriate) to ensure familiarity with existing conditions, and project requirements.
- 3.1.3 External Communications: The UC will coordinate activities with County and County's Design Consultant. The UC will also provide the County copies of diaries, correspondence and other documentation of work-related communications between the UC, utility owners and other outside entities when requested by the County.
- 3.1.4 Permits and rights of entry. Obtain necessary permits from city, county, municipality, railroad or other jurisdiction to allow the engineer to work within existing streets, roads or private property for additional designating and/or subsurface utility locating.
- 3.2. **The Utility Coordination Consultant (UC) shall determine which utilities will conflict with highway construction or TxDOT's "Utility Accommodation Rules" (UAR), and make the utility company aware of these conflicts. The UC shall assist the utility companies in the preparation of required agreements associated with the funding of adjustments and the occupation of the street right of way;**
 - 3.2.1. Utility Assembly: A packaged agreement consisting of the County's supplied standard forms, Plans on 11x17 sheets, copy of recorded easement, schedule of work and various attachments as detailed in the County's requirements.
 - 3.2.2. Utility Agreements: If a utility is located within an easement, the utility company may have a compensable interest. The utility company must furnish a copy of their easement to the UC. The UC shall determine whether or not a compensable interest exists and the owner's degree of eligibility. The UC shall assist the utility company with adjustment plans and cost estimate for these adjustments. The UC shall review plans to ensure compliance with TxDOT's UAR and that the proposal will not conflict with highway construction. The UC will submit a copy of the easement, plans, and estimate to County by letter with recommendations. The utility should be reimbursed for costs incurred within their easement limits for replacement in kind.
 - 3.2.3. Utility Acknowledgement/Permit: Non-Reimbursable Utility Adjustments shall be submitted with the standard County forms. The UC will furnish the appropriate forms to the utility company. The utility company should submit the permit forms and adjustment plans to the UC for review. The

UC shall review plans for compliance with TxDOT's UAR and that the proposed alignment will not conflict with highway construction. The UC will submit the permit forms to the County.

- 3.2.4. The UC will submit the required number of executed copies of the Utility Assemblies, which include the appropriate forms supplied by the County, a copy of the recorded easement Deed, plans, and an estimate to County.

4. Utility Engineering including the identification of utility conflicts, coordination, compliance with Utility Accommodation Rules, and resolution of utility conflicts.

4.1. Coordination of engineering activities include:

- 4.1.1. Utility Layout: The Engineer shall maintain a utility layout in Microstation format. This layout shall include all existing utilities which are to remain in place or be abandoned, and all adjusted utilities. This layout will be utilized to monitor the necessity and evaluate alternatives. The engineer will utilize the layout of existing utilities as prepared under an existing SUE contract and make a determination of the following;
- 4.1.2. Facilities in conflict with the proposed project that are to be relocated.
- 4.1.3. Facilities to be abandoned in place.
- 4.1.4. Facilities to remain in service and in place as a result roadway design adjustments and meeting the current UAR.

4.2. Individual Meetings with Utility Companies as required to facilitate utility conflict identification and resolution.

- 4.2.1. Establish Contact with all existing utilities within and adjacent to the project limits and set up utility coordination meetings to discuss concepts and options for construction.
- 4.2.2. Schedule utility coordination meetings compatible with the schedule of County Engineer's representative and the County Engineer.
- 4.2.3. Set agenda for coordination meetings and submit to County Engineer for review and comment prior to the scheduled meeting.
- 4.2.4. Initial Project Meeting: Attend an initial meeting and an on-site inspection (when appropriate) to gain familiarity with existing conditions, and project requirements.
- 4.2.5. Progress Meetings: Meet with the County Engineer periodically to coordinate the work effort and resolve problems and prepare minutes of such meetings. The meetings will review:
 - 4.2.5.1. Activities completed since the last meeting
 - 4.2.5.2. Problems encountered.
 - 4.2.5.3. Late activities.
 - 4.2.5.4. Activities required by the next progress meeting.
 - 4.2.5.5. Solutions for unresolved and/or anticipated problems.
 - 4.2.5.6. Information or items required from other agencies/consultants.

4.3. Review of Utility's Proposed Adjustments

- 4.3.1. Evaluate Alternatives: The ENGINEER will evaluate alternatives in the adjustment of utilities balancing the needs of both County and the Utility.
- 4.3.2. Review Estimates and Schedules: The ENGINEER will review the utility adjustment estimates for reasonableness of cost and the timely scheduling of the adjustment.
- 4.3.3. Review Plans for compliance with TxDOT's Utility Accommodation Rules and proposed location data. The responsibility for quality and accuracy of Utility adjustment plans will remain with the Utility Company.

Williamson County - Utility Services Contract
Work Schedule

WORK SCHEDULE

	December-08	January-09	February-09	March-09	April-09	May-09	June-09	July-09	August-09	September-09	October-09	November-09	December-09	January-10	February-10	March-10	April-10
Notice to Proceed ◆	◆																
Proposed Project Letting (pending)									◆								
Anticipated ROW Available for Utility Relocation Efforts																	
Utility Adjustment Coordination																	
Initial Project Meeting Updates with Stakeholders																	
On-Site Inspection to Update and Verify Utility Status																	
Progress Meetings with Utility Company Representatives																	
Review of Existing Utility Layout and Design																	
Bi-Weekly Progress Meetings																	
Utility Easement Document Preparation and Survey																	
Subsurface Utility Engineering																	
Utility Agreement Assemblies Preparation																	
Secure and Revise Utility Agreement and Plans for Reimbursables																	
Secure Utility Acknowledgement and Plans for Non-Reimbursables																	
Process Billings																	
Utility Engineering																	
Create and Maintain Monthly Utility Tracking Report																	
Review Utility Adjustment Estimates and Schedules																	
Review Plans for Compliance with UAR																	
Review Traffic Control Plans																	
Establish Sequence of Construction of Utility Relocation Work																	
Meetings w/Utility Companies/facilitate conflict resolutions																	
Critical Path Schedule																	
Utility Construction Management and Verification																	
Pre-Construction Meeting																	
Verification of Utility Relocations																	
Review Payment Requests																	

APPENDIX B

UTILITY COORDINATOR'S QUALIFICATIONS STATEMENT

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
11/05/08

PRODUCER

USI Southwest
840 Gessner Suite 600
Houston, TX 77024
713 490-4600

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Cobb, Fendley & Associates, Inc.
13430 Northwest Frwy Ste 1100
Houston, TX 77040

INSURERS AFFORDING COVERAGE

NAIC

INSURER A: Travelers Indemnity Company

25658

INSURER B: Evanston Insurance Company

35378

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRC	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	PACP4387M470TLC08	07/10/08	07/10/09	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
		CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COM/OP AGG	\$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:					
		<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
A		AUTOMOBILE LIABILITY	BA4390M47408GRP	07/10/08	07/10/09	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/>	ANY AUTO				BODILY INJURY (Per person)	\$
		ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/>	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/>	HIRED AUTOS					
	<input checked="" type="checkbox"/>	NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A		EXCESS/UMBRELLA LIABILITY	XSMCUP0248T461TCT0	07/10/08	07/10/09	EACH OCCURRENCE	\$2,000,000
	<input checked="" type="checkbox"/>	OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$2,000,000
		DEDUCTIBLE					\$
	<input checked="" type="checkbox"/>	RETENTION \$ 10000					\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	XVMPKUB0251T11508	07/10/08	07/10/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
B		OTHER Professional Liability	BINDERAE814086	10/14/08	10/14/09	\$2,000,000 per claim \$2,000,000 annl aggr.	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

* Except for 10 days notice of Non-Payment of Premium

Prof Liab: The aggregate limit is the total insurance available for claims presented within the policy period for all operations of insured. The limit will be reduced by (See Attached Descriptions)

CERTIFICATE HOLDER

Williamson County
710 Main Street
Georgetown, TX 78626

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



DESCRIPTIONS (Continued from Page 1)

payment of indemnity and expenses

Certificate Holder is an additional insured as respects to the General Liability as required by written contract.