



**AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This Agreement is made as of December 23, 2008 (the "Effective Date"), by and between

The Owner: Williamson County
301 S.E. Inner Loop, Ste. 109
Georgetown, Texas 78626

and Contractor Myers Concrete Construction, LP
P.O. Box 2928
Wimberley, Texas 78676

for the Project: Foundation Stabilization and Pier Installation for the Justice of the Peace, Precinct 4 Court Building located at located at 211 W. 6th Street, Taylor, TX 76574

AGREEMENT, this Agreement between Owner and Contractor (hereinafter called "Agreement") is entered into effective as of the latest date of the signatories indicated at the conclusion of this document and all attachments (the "Effective Date"), by and between Williamson County, a political subdivision of the State of Texas (hereinafter called the "Owner") and Myers Concrete Construction, LP, a Texas limited partnership, acting by and through its general partner, Myers Concrete, LLC (hereinafter called "Contractor").

WHEREAS, the Owner desires to retain a Contractor for foundation stabilization and pier installation at the Justice of the Peace, Precinct 4 Court Building located at located at 211 W. 6th Street, Taylor, TX 76574 (hereinafter called the "Project"),

WHEREAS, the Owner desires a Contractor who will render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project, and

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE 1 SCOPE OF WORK

The Contractor has 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 Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The Uniform General Conditions for Williamson County ("General Conditions") as attached, however, this Agreement shall control in the event of a conflict with those Uniform General Conditions;
- c. All Addenda issued prior to the Effective Date of this Agreement;
- d. The "Proposal Documents" as defined by the "Instructions to Proposers" in the original Request for Proposals: Proposal Number 09WCP801;
- e. All Change Orders issued after the Effective Date of this Agreement;
- f. The Drawings, Specifications, details and other documents developed by Owner and/or Owner's architect, R. Gill Architects, and Owner's engineer, CDY Consulting Engineers, Inc., to describe the Project and accepted by Owner; and
- g. The Drawings and Specifications developed or prepared by Owners other consultants, if any, and accepted by the Owner.

- h. Addendum #1 to the Request for Proposals: Proposal Number 09WCP801; being dated October 24, 2008.

2.2 The Contract Documents form the entire and integrated Agreement between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

2.3 The term "Contractor" shall be interchangeable with the terms "Proposer" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

ARTICLE 3 DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have meanings as follows.

3.1 "Construction Documents" means, collectively, the Drawings, Specifications, details, accepted and approved Change Orders and other documents prepared by the Owner's architect, engineer and/or its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

3.2 "Contract Sum" means the total amount of all compensation payable to the Contractor for the Project and shall not exceed the Total Base Bid proposed by the Contractor and accepted by the Owner, subject to adjustment as approved by Owner for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Contractor without reimbursement by Owner.

3.3 "Final Completion" means the stage in the progress of the Work when, in the Owner's opinion, the entire Work has been completed, the Contractor's obligations under the Contract Documents have been fulfilled, and the Owner is processing or has made final payment to the Contractor, as evidenced by a Certificate of Acceptance approved by the Owner. The Final Completion Date is a crucial element of the Project. Therefore, the Substantial Completion Date is not subject to change unless due to "force majeure" as defined herein and in any associated Contract Documents or unless agreed to in advance in writing by the parties.

3.4 "Notice to Proceed" refers to the written document issued by the Owner following acceptance of the proposal and execution of this Agreement which indicates the date on which the Work is to begin.

3.5 "Owner" means Williamson County and includes its designated Owner's Designated Representative.

3.6 "Owners Designated Representative or ODR" means the individual described in Article 7.3 herein below.

3.7 "Owner's Specifications" means the construction and contract administration requirements and standards as interpreted by Owner.

3.8 "Standards and Standard Specifications" means the construction and design requirements and the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction

3.9 "Subcontractor" means a person or entity that has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Owner's architect, engineer, consultant or any person or entity hired directly by the Owner.

3.10 "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.

3.11 "Work" means provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work. The Contractor shall not be entitled to an increase in the Contract Sum due to the absence of any detail or specification the Contractor may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the Contractor shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

ARTICLE 4 SUBSTANTIAL COMPLETION

4.1 Substantial Completion. 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 and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Designated Representative does not consider the Work substantially complete, Owner's Designated Representative 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 Contract Documents. After satisfactorily completing items identified by Owner's Designated Representative, the Contractor shall then submit another request for Owner's Designated Representative to determine Substantial Completion. If Owner's Designated

Representative considers the Work substantially complete, Owner's Designated Representative 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 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 Contract Documents. 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.

4.2 Owner intends to achieve Substantial Completion (as defined in this agreement) for all stages of construction on or before the following completion date:

EXPECTED DATE FOR SUBSTANTIAL COMPLETION: Ninety (90) calendar days from the date of the Notice to Proceed. In the event a written Notice to Proceed is not issued, Substantial Completion shall be attained within Ninety (90) calendar days from Contractor's commencement of construction. For purpose of this provision, "commencement of construction" shall mean the day in which any materials are delivered to the Project site or any Work is started.

Under no circumstances will the time for Substantial Completion exceed this date without a written amendment to this Agreement.

4.3 THE TIMES SET FORTH IN THE CONSTRUCTION DOCUMENTS ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT.

ARTICLE 5 COMPENSATION

5.1 Contract Sum. The Contract Sum for the Project is:

ONE HUNDRED NINETEEN THOUSAND AND THREE HUNDRED DOLLARS AND NO/100 (\$119,300.00)

5.2 Contract Payments. Method and terms of payment of the contract sum shall be in accordance with the Contract Documents.

5.3 Liquidated Damages. For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of:

Five hundred Dollars per day (\$500.00/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 Project would be impractical, unduly

burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES

QUALITY OF WORK

6.1 Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Contractor shall render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project. The enumeration of specific duties and obligations performed by the Contractor hereunder shall not be construed to limit the general undertakings of the Contractor. The obligations of the Contractor hereunder run to and are for the benefit of only the Owner.

6.2 Notwithstanding anything to the contrary contained in this Agreement, Owner and Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

6.3 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

6.4 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.

COORDINATION OF THE WORK

6.5 Contractor shall cooperate with the Owner and its ODR and endeavor to further the interests of the Owner and the Project. Contractor shall complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

6.6 Contractor shall designate a representative authorized to act on the Contractor's behalf with respect to the Project. Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interest of Owner. The Contractor agrees to provide an on-site, full-time superintendent for the duration of the Project.

6.7 Contractor shall review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.

6.8 Contractor shall visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

6.9 Contractor shall, at Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

6.10 Contractor shall review all Drawings, Specifications, and other Construction Documents as they are developed by the Owner and/or its architect, engineer and/or consultant and advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

6.11 Contractor shall review the Construction Documents for compliance with all applicable laws and code requirements and with Williamson County requirements.

6.12 Contractor shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

6.13 Contractor shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

6.14 Contractor shall consult with and make recommendations to the Owner on the acquisition schedule for any necessary equipment, if any, and coordinate the Owner's purchase and installation of such items with the Owner as may be required to meet the schedule.

6.15 Contractor shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed 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. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

6.16 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 and with the requirements of an Owner controlled insurance program, if any.

6.17 Contractor shall provide recommendations and information to Owner and its architect, engineer and/or consultant regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents.

CONSTRUCTION WORK

6.18 Construction shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner and shall continue until Final Completion of all Work. The Contractor shall Construct the Work in strict accordance with the Construction Documents and Owner's Specifications within the time required by the Project Schedule approved by Owner.

6.19 The Contractor hereby agrees to make any and all changes, furnish the materials and perform the Work which may be required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents, without nullifying this Contract. **NO ALTERATIONS OR CHANGES SHALL BE MADE, HOWEVER, EXCEPT UPON THE WRITTEN ORDER OF THE OWNER, OR ITS AUTHORIZED REPRESENTATIVE.**

6.20 Contractor shall organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work.

6.21 Contractor shall designate, in writing, a representative who is responsible for the day-to-day management of the Work. The designated representative shall be the Owner's primary contact during the Work and shall be available as required for the benefit of the Project and the Owner. The 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 and Applications for Payment.

6.22 Contractor shall attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.

6.23 Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

6.24 Contractor shall assist in obtaining building permits and obtain special permits for permanent improvements as required by law or the Construction Documents. Assist Owner and/or or Owner's architect, engineer and/or consultant in obtaining all approvals required from authorities having jurisdiction over the Project.

6.25 Contractor shall coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

6.26 Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Contractor shall keep the Owner informed of the progress and quality of the Work.

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

6.28 Contractor shall warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents. The Contractor shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

6.29 Regarding Record Documents and the Owner's Project Closeout Specification, the Contractor shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

WARRANTY RESPONSIBILITIES

6.30 Contractor guarantees all foundation repairs made pursuant to this Agreement for Ten (10) years following Final Completion of the Project. Contractor's foundation repair guarantee shall cover the areas of structure that is to be stabilized as a part of the Work, in accordance with the Contract Documents. Owner acknowledges that some future movement is possible and Owner understands that Contractor gives no guarantee, expressed or implied, for any repairs other than foundation adjustments and Work described in the Contract Documents. Contractor shall provide warranty services in relation to the said guarantee for the full Ten (10) years following Final Completion of the Project. Just before the guarantee or warranty period expires, Contractor shall attend an on-site meeting with the Owner and/or its architect, engineer and/or consultant to ensure that all issues, if any, have been identified and properly remedied.

ARTICLE 7 OWNER'S RESPONSIBILITIES

7.1 The Owner may provide a general schedule for the Project. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

7.2 The Owner will identify a person as its Owner's Designated Representative ("ODR") who is authorized to act in the Owner's behalf with respect to the Project. 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.

7.3 The Owner, 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 Project.

7.4 The Owner shall 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.

7.5 The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Contractor's responsibility for the Work. Contractor is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

7.6 Owner shall have the right to reject any defective Work on the Project. 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.

7.7 Owner shall furnish to the Contractor the number of Construction Document sets as required by this Agreement.

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

8.1 The Construction Documents and any other documents prepared by the Owner's architect, engineer and/or other consultants retained by the Owner for the Project that describe the Work to be executed by the Contractor are instruments of service and shall remain the property of the Owner whether the Project for which they are made is executed or not. The Contractor and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. The Contractor and its Subcontractors shall not use the Construction Documents on any other projects.

8.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project is authorized.

ARTICLE 9 TIME

9.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT.

9.2 Unless otherwise approved, the Owner and the Contractor shall perform their respective obligations under the Contract Documents as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

ARTICLE 10 BONDS AND INSURANCE

10.1 Performance Bond. Upon execution of this Agreement, Contractor shall provide a Performance Bond in the amount of 100% of the Contract Sum. The surety for a Performance Bond shall meet the requirements set forth in the General Conditions.

10.1.1 Payment Bond. Upon execution of this Agreement, Contractor shall provide a Payment Bond in the amount of 100% of the Contract Sum, 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 same requirements as set forth for payment bonds in the General Conditions.

10.1.2 Warranty Bond. Upon execution of this Agreement, Contractor shall provide a Warranty Bond in the amount of 100% of the Contract Sum, as security for the true and faithful performance of all warranties set forth in the Contract Documents.

10.2 The Contractor shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor. Prior to commencing any work under this Agreement, Contractor shall provide evidence of the insurance coverage as required by the General Conditions.

10.3 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 the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Contractor.

10.4 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.

10.5 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.

10.6 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. The rule requires a governmental entity, such as Owner, to timely obtain certificates of coverage and retain them for the duration of the project. As more fully set forth in the General Conditions, the Contractor shall provide such worker's compensation insurance 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 on the Project, for the duration of the Project.

ARTICLE 11 INDEMNITY

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

11.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 12 SPECIAL WARRANTIES

12.1 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

12.2 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

12.3 Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, that it is duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the

individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

12.4 Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of the Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.

12.5 Except for the obligation of Owner to pay Contractor the Contract Sum 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 13 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Assignment. 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.

14.2 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

14.3 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.

14.4 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 Project 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.

14.5 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.

14.6 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.

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

14.8 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.

14.9 Records. 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.

14.10 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

14.11 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.

14.12 No Waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of sovereign immunity by Williamson County.

14.13 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.

14.14 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.

14.15 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.

14.16 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.

ARTICLE 15 Notices

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:	Williamson County Judge (or successor) 301 S.E. Inner Loop, Ste. 109 Georgetown, Texas 78626
--------------	--

Honorable Jana Duty (or successor)
Williamson County Attorney
405 M.L.K. Street, Box #7
Georgetown, Texas 78626

Myers Concrete Construction, LP
P.O. Box 2928
Wimberley, Texas 78676

Party Representatives

Joe Latteo
3101 SE Inner Loop
Georgetown, Texas 78626
Phone (512) 943-1609
Fax (512) 930-3313

Randy Myers
Myers Concrete Construction, LP
P.O. Box 2928
Wimberley, Texas 78676
Office Phone: (512) 847-8000
Mobile Phone: (512) 753-6800
Fax (512) 847-3831

The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

WILLIAMSON COUNTY
Williamson County, Texas,

By: _____

Dan A. Gattis,
Williamson County Judge

MYERS CONCRETE CONSTRUCTION, LP,
a Texas Limited Partnership, acting by and
through its General Partner, MYERS
CONCRETE, LLC, a Texas Limited Liability
Company

By: _____

Printed Name: _____

Chakene Myers

Title: _____

President

ATTEST:

By: _____

Printed Name: _____

Title: _____

ATTEST:

By: _____

Printed Name: _____

Title: _____

Nicole K. Parkore

Nicole K. Parkore

Off mgr.

APPROVED AS TO FORM ONLY:

By: _____

Hal C. Hawes, Assistant County
Attorney

By: _____

Jim Gilger, Williamson County
Contracts Management Auditor