

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This Professional Services Agreement (the "Agreement") is made and entered into this day by and between Williamson County, Texas, a political subdivision of the State of Texas, (the "County") and Oris Solutions, LLC (the "Consultant");

WHEREAS, County desires to obtain professional services for preparing written comments for County in response to EPA proposed rules for ground level ozone as published in the Federal Register on January 19, 2010 (the "Project");

WHEREAS, Consultant has the professional ability and expertise to fulfill the requirements of the Project, and to counsel County in relation to the Project;

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

Section I Employment of the Consultant

County agrees to employ Consultant and Consultant agrees to perform professional 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, 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.

Section II Basic Services of the Consultant

- A. In consideration of the compensation herein provided, Consultant shall perform professional services for the Project, which are acceptable to the County, based on standard engineering practices and the scope of work described in this Agreement. Consultant shall also serve as County's professional consultant in those phases of the Project to which this Agreement applies and will consult with and give advice to County during the performance of Consultant's services.
- B. County shall provide Consultant with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to this particular Project at no cost to Consultant; however, any and all such information shall remain the property of County and shall be returned, if the County so instructs Consultant.

- C. Consultant shall perform the following Basic Scope of Services (the "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, in accordance with the requirements, policies, and general practices of Williamson County.
 2. Consultant will perform the following services, as per Consultant's proposal letter dated 2/17/2010:
 - A. Developing and documenting the County's comments on the United States Environmental Protection Agency's proposed new National Ambient Air Quality Standard (NAAQS) for ozone.
 - B. Review of EPA's current ozone NAAQS proposal, a review of existing technical reports and other documents produced for Williamson County related to any ozone NAAQS (current or previously proposed), the production of a draft set of comments for review by County and its other officials, and a final, complete set of detailed comments ready for submittal to the EPA by their March 22, 2010 deadline. The comments will include discussions regarding the soundness of the air quality science used to set the proposed standard, an analysis of the 11 factors EPA considers in evaluating attainment status, the impact and influence of transported and background ozone and ozone precursors, the pro-active measures already in place in the County, and future measures planned by the County.

Section III

Fee schedule

- A. For and in consideration of the performance by Consultant of the work described in the Basic Scope of Services, County shall pay and Consultant shall receive the lump sum fee set forth in Exhibit I, which is attached hereto. Invoices shall be submitted by Consultant 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. Prior to the performance of services not specifically described in the Basic Scope of Services, Consultant and County shall mutually agree, in writing, on the scope and compensation for any such additional services.

Section IV

Period of Service

- A. Consultant shall perform the professional services described herein in accordance with the time periods set forth in Section II. C. above.
- B. 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 Consultant of written Notice of Reinstatement from County.

- C. 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 engineering, surveying and consulting practices and the scope of work described in this Agreement), through no material fault of the terminating party.
- D. Either party may terminate this Agreement for convenience and without cause or further liability upon ten (10) days written notice to the other party; provided that the terminating party is not in breach of this agreement. In the event of termination for convenience and without cause, it is understood and agreed that only the amounts due to Consultant for services provided and expenses incurred to and including the date of termination, will be due and payable.
- E. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

Section V Consultant's Responsibility and Liability

- A. Consultant covenants to undertake no task in which a professional license or certificate is required unless it or someone under his direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, Consultant shall inform County of such event within five working days.
- B. Consultant shall perform all services and responsibilities required of Consultant under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing contemporaneously under similar conditions in the locality of the Project.
- C. Consultant 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 Consultant 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 Consultant and professional personnel.
- D. All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant, 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.
- E. Consultant shall furnish all equipment, transportation, supplies, and materials required for its operations under this Agreement.
- F. Consultant is an independent contractor under this Agreement. Neither it nor any officer,

agent nor employee of Consultant shall be classified as an employee of County.

Section VI Ownership of Documents

- A. Any and all documents prepared by Consultant as a part of this Agreement shall become 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 Consultant retaining a copy.
- B. Any reuse by Consultant of any such documents described in Subsection A. above, without the specific written consent of County shall be at Consultant's sole risk and without liability or legal exposure to County. Should Consultant be terminated, Consultant shall not be liable for County's use of partially completed reports for this Project or any other project.

Section VII Maintenance of and Right of Access to Records

- A. Consultant agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, together with documentation produced as a part of this Agreement 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. Consultant 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 Consultant, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant agrees that County shall have access during normal working hours to all necessary Consultant 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 Consultant reasonable advance notice of intended audits.

Section VIII 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.*** Consultant agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit II, which is attached hereto and made a part hereof.
- D. ***Certificate of Consultant.*** Consultant certifies that neither Consultant nor any members of Consultant'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 Consultant) 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 Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.

Consultant 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:

CONSULTANT: Oris Solutions, LLC
c/o James Red, Senior Consultant
4611 Bee Caves Rd, Suite 100
Austin, Texas 78746

COUNTY: Williamson County Judge
301 SE Inner Loop, Suite 106
Georgetown, Texas 78626

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

- F. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent County becomes aware that Consultant is delinquent in the payment of property taxes related to property located in Williamson County at the time of invoicing, Consultant 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 Consultant is delinquent in the payment of property taxes.
- G. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of County and Consultant and their respective successors, executors, administrators, and assigns. Neither County nor Consultant may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- H. **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.
- I. **Taxpayer Identification.** Consultant shall provide to County Judge upon submittal of Consultant'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.
- J. **Compliance with Laws.** Consultant 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 Consultant shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
- K. **Definition of Consultant.** The term "Consultant" as used herein is defined as including Registered Professional Surveyors and Engineers, as applicable to the work to be performed under this Agreement.
- L. **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.
- M. **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.
- N. **Entity Status.** By my signature below, I certify that Consultant is a corporation, duly authorized to transact and do business in the State of Texas.
- O. **Acknowledgement.** As a duly authorized representative of Consultant, I acknowledge by my

signature below that I have read and understand the above paragraphs and that Consultant has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.

- P. ***Independent Contractor Status.*** Both parties hereto, in the performance of this contract, 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. The Consultant shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Consultant's employees.
- Q. ***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.
- R. ***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, its 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.
- S. ***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.

- T. **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.
- U. **Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms and conditions set forth in 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 this Agreement shall control over the terms and conditions set forth in any Exhibit, Appendix or Attachment to this Agreement.
- V. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between County and Consultant 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 Consultant. 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 23rd day of February, 2010

THE CONSULTANT:

WILLIAMSON COUNTY:

ORIS SOLUTIONS, LLC

BY: James Red

BY: Dan A. Gattis

Printed Name: JAMES RED

Dan A. Gattis, County Judge

Representative Capacity: _____

EXHIBIT I

COMPENSATION FOR PROFESSIONAL SERVICES

LUMP SUM FEE

SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The lump sum fee for the performance of the Basic Scope of Services described in the Agreement shall be the sum of \$7,350.00 (Seven Thousand Three Hundred Fifty and no/100 Dollars.

Costs will only be billed for work/hours completed and will not exceed the total estimated amount in Table 1 unless a change in scope of work is requested by and approved by the County. If travel becomes necessary, automobile travel within Texas will be billed at a rate of \$0.50/mile. Any other travel costs, including air fare, lodging, meals, parking, etc will be reimbursable based on current Williamson County per diem rates. However, the current scope of work does not include travel.

Table 1 - Tasks and Costs

Task	Description	Estimated time (hrs)	Charge Rate (\$/hour)	Cost/Task
1	Review current EPA ozone NAAQS proposal	8	\$105	\$840
2	Review existing technical documents provided by client	16	\$105	\$1,680
3	Development and production of draft set of comments	30	\$105	\$3,150
4	Production of final comments for submittal to EPA	16	\$105	\$1,680
	Total Estimated Cost		72	\$7,350

- 1.2 Consultant shall be reimbursed for actual non-labor expenses incurred in the performance of the services under this Agreement at the Consultant's invoice cost.

SECTION 2 - NOT-TO-EXCEED AMOUNT

- 2.1 Consultant and County acknowledge the maximum amount payable under this Agreement for all labor and non-labor costs and expenses, without modification, shall be \$7,350.00 (not-to-exceed-amount). In no event may the aggregate amount of compensation and expenses authorized under this agreement exceed this not-to-exceed-amount.

SECTION 3 - ADDITIONAL SERVICES

- 3.1 For Additional Services, the scope and compensation for the additional services shall be negotiated in advance of the performance of any such services and reduced to a written agreement.

SECTION 4 – REQUIRED SUPPORTING DOCUMENTATION

- 4.1 Upon submittal of the initial invoice for service, Consultant shall provide County 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.
- 4.2 All invoices submitted to County 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.
- 4.3 For Additional Services performed pursuant this Agreement, a separate invoice or itemization of this work will be presented with the same requirements for supporting documentation as in Section 4.2 of this Exhibit.
- 4.4 Invoices requesting reimbursement for expenditures related to the project must be accompanied by copies of the provider's invoice which was previously paid by Consultant.

EXHIBIT II

EQUAL OPPORTUNITY IN EMPLOYMENT

- A. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant 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. Consultant 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. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. In the event of Consultant'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 Consultant 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.