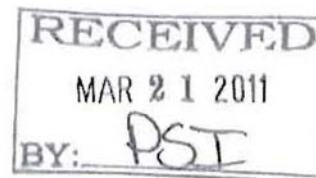


Contract No. CP&Y - Construction Observer



### Checklist

#### Prior to Initiation of Work

- ☒ Signed and Executed Agreement
- ☒ Scope of Services - Appendix A
  - ☐ Exhibit V - Services to be provided by County
  - ☐ Exhibit IX - Services to be provided by Engineer
  - ☐ Exhibit C - Work Schedule
  - ☐ Exhibit D - Fee Schedule
- ☒ Production Schedule - Exhibit IV
- ☒ Hourly Rates of Engineer - Exhibit III
- ☒ Work Authorization - Exhibit II
  - ☐ Supplemental Work Authorization for Additional Work (if applicable)
- ☒ Data to be provided to Engineer by County
  - ☐ Plans
  - ☐ Maps
  - ☐ Studies
  - ☐ Reports
  - ☐ Field Notes
  - ☐ Statistics
  - ☐ Computations
  - ☐ Other: \_\_\_\_\_
- ☒ Engineer's Qualification Statement - Appendix X
- ☒ Insurance *RFR - pre-qualified list*
  - ☐ Worker's Compensation
  - ☐ Commercial General Liability Insurance
  - ☐ Automobile Liability Insurance
  - ☐ Professional Liability Errors and Omissions Insurance
  - ☐ Self Insurance Documentation
  - ☐ Insurance Certificates for Subcontractors and/or Sub-consultants
  - ☐ Approval of Insurance by County

#### Course of Work

- ☐ Original Engineering Work Product submittal
- ☐ "Completed" Engineering Work Product
- ☐ "Accepted" Engineering Work Product
- ☐ Modifications and/or Changes for Approval of Engineering Work Product
- ☐ "Approved" Engineering Work Product
- ☐ Revisions to Work Product
- ☐ Seal of Endorsement on all Engineering Work Product
- ☐ Data necessary for applications or documentation for permits and/or grants to be provided by Engineer to County

**Contract No.** \_\_\_\_\_

**Notices (as applicable)**

- ☐ Notice of Suspension
- ☐ Notice of Reinstatement
- ☐ Notice of Termination
- ☐ Notice of Staffing Changes
- ☐ Written Report of Accident

**Documentation for Payment**

- ☐ Internal Revenue Form W-9
- ☐ Invoice for Services Rendered
  - ☐ Supporting Documentation
  - ☐ Report of Completion Percentage
- ☐ Invoice for Reimbursables
  - ☐ Proof of prior payment by Engineer of Reimbursables

Contract No. \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT**

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**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 CP&Y, Inc. (**the "Engineer"**).

WHEREAS, **County** proposes to construct various transportation projects;

WHEREAS, **County** desires to obtain Professional Engineering Services for Construction Inspection and/or Observation (**the "Project"**);

WHEREAS, **Engineer** has the professional ability and expertise to fulfill the requirements of the **Project**, and to provide advice to the **County** in the selection and analysis of cost-effective alternatives;

WHEREAS, **Engineer** agrees to provide the Professional Engineering Services as more fully set forth in Exhibit IX ("Scope of Services");

WHEREAS, all of the Professional Engineering Services to be provided by **Engineer** pursuant to this Agreement are professional services, the essence of which entails the provision of advice, judgment, or opinion;

WHEREAS, the **County** has separately contracted with a separate engineering firm or individual (**the "Designer"**) for the preparation of the Plans, Specifications, and Estimates (**the "PS&E"**) for the **Project**.

NOW, THEREFORE, **County** and **Engineer** agree to the performance of the Professional Engineering Services by **Engineer** and the payment for these services by **County** as set forth herein.

**Section I**  
**Employment of the Engineer**

**County** agrees to employ **Engineer** and **Engineer** agrees to perform the Professional Engineering 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 writing by the County Judge (**individually or collectively the "County Judge"**). The **County Judge** shall have complete authority for the purpose of resolving disputes arising under this Agreement. The **County Judge's** decision shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

However, nothing in this Section I or in any other provision of this Agreement regarding submission

of disputes to the *County Judge* and the *County Judge's* ability to resolve disputed matters shall be construed to establish anything other than a *de novo* standard of review by a court of competent jurisdiction in the event that the parties hereto avail themselves of their right to seek civil remedies for any dispute. In the event of a dispute between the terms and conditions of this provision and any other provision of this Agreement, the terms and condition of this provision shall govern.

It is the intention of the *County* and the *County Judge*, and agreed to and hereby acknowledged by the *Engineer*, that no provision of this 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.

## Section II Professional Services of the Engineer

- A. In consideration of the compensation herein provided, *Engineer* shall perform Professional Engineering Services for the *Project*, which are acceptable to the *County Judge*, based on standard engineering practices and the scope of work described on the Exhibits attached to this Agreement. *Engineer* shall also serve as *County's* professional engineer in those phases of the *Project* to which this Agreement applies and will consult with and give advice to *County* during the performance of *Engineer's* services.
- B. *Engineer* shall not commence work until *Engineer* 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 Exhibit II ("Work Authorization"), attached to this Agreement.
- C. *County* shall provide *Engineer* with all Plans, Specifications, and Estimates (PS&E) to this particular *Project* at no cost to *Engineer*; however, any and all such information shall remain the property of *County* and shall be returned, if the *County Judge* so instructs *Engineer*.
- D. *Engineer* shall perform the following Professional Engineering Services:
  - 1. The basic Scope of Services shall generally consist of all elements of Professional Engineering Services required for the *Project* (as more fully set out in Exhibit IX to this Agreement, "Scope of Service"), satisfactory to the *County Judge* and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Williamson County.

## Section III Fee schedule

- A. For and in consideration of the performance by *Engineer* of the Professional Engineering Services described in the Scope of Services, *County* shall pay and *Engineer* shall receive the fee set forth in Exhibit I. The fee is based upon the hourly rates set forth in Exhibit III. Exhibits I and III are attached hereto and made a part hereof. Invoices shall be submitted by *Engineer* 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 *Engineer* shall receive the additional services compensation described in Exhibit IV, which is attached hereto and made a part hereof. In the event of any dispute over the classification of *Engineer's* services as basic or additional services under this agreement, the decision of the *County Judge* shall be final and binding on *Engineer*.

#### Section IV Period of Service

- A. *Engineer* shall perform the Professional Engineering Services described in Exhibit IX, the Scope of Services.
- 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 construction contract award and construction of the *Project*, including warranty periods provided by the contractor pursuant to the construction contract and any extensions of time, unless terminated earlier as provided for herein. *Engineer* shall complete all work as described in the Scope of Services upon receipt by *Engineer* of *County's* written Work Authorization.
- C. Neither *Engineer* nor *County* shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond *Engineer's* or *County's* reasonable control. Upon the discovery of such an event, *Engineer* 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 *Engineer* of written Notice of Reinstatement from *County*. *Engineer*, upon receipt of a Notice of Suspension shall follow the procedures described in the attached Exhibit VI, which is attached hereto and made a part hereof. In the event such suspension of the *Project* or the *Engineer's* services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, *Engineer* 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 material failure of the other party to perform in accordance with the terms of this Agreement (the materiality of such failure to be based on standard engineering 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 material failure by *Engineer* to perform by delivering a written Notice of Termination which shall take effect on the tenth day following *Engineer'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. *Engineer* shall follow the procedures specified in Exhibit VI upon issuance or receipt of such notice. In the event of termination of this Agreement because of the material failure of *Engineer* to perform, *County* may prosecute the work to completion by contract or otherwise and, in such a case, *Engineer* shall be liable for any additional costs incurred by *County*.

- F. 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 *Engineer's* services. The *County Judge* may, in writing, designate representatives to transmit instructions and receive information.
- B. *Engineer* 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 that in Exhibit II.
- C. *Engineer* shall have the responsibility at all times under the terms of this Agreement to advise *County* whether in *Engineer's* judgment it is feasible to proceed with the recommendations given any known constraints affecting the *Project*.
- D. *Engineer* shall cooperate and coordinate with *County's* staff, and other engineers and contractors as reasonable and necessary and as required by the *County Judge*.

#### Section VI Review of Engineer's Instruments of Service

- A. *Engineer's* engineering Instruments of Service will be reviewed by *County* under its applicable technical requirements and procedures.
- B. Reports and supporting documents, (*the "Instruments of Service"*), shall be submitted by *Engineer* on or before the date specified in Exhibit IX. Upon receipt of the Instruments of Service, the submission shall be checked for acceptance. "Acceptance" shall mean that in the *County Judge's* opinion substantial conformance with the requirements of the Scope of Service of this Agreement has been achieved. The acceptability of any Instruments of Service submitted to *County* shall be determined by *County* within fourteen (14) days of such submittal and *County* shall notify *Engineer* in writing within such 14-day period if such work product has been found to be acceptable.
- C. If the submission is acceptable, *County* shall notify *Engineer*, in writing within fourteen (14)



days of the submission, that the submission is acceptable.

- D. If the submission is deemed not acceptable, **County** shall notify **Engineer**, who shall perform such Professional Engineering Services as are required to make the Instruments of Service in conformance with the Scope of Services and resubmit it to **County**. This process shall be repeated until a submission is deemed acceptable.
- E. **County** shall review the Instruments of Service for conformance with the Scope of Services. If necessary, the Instruments of Service shall be returned to **Engineer**, who shall perform any required Professional Engineering Services and resubmit it to **County**. This process shall be repeated until the Instruments of Service is accepted.
- F. After acceptance, **Engineer** shall perform any required modifications, changes, alterations, corrections, and additional work necessary to receive final approval by the **County Judge**. "Approval" in this sense shall mean formal recognition that the Scope of Services have been fully performed and submitted in conformance with Exhibit IX.
- G. After approval of final Instruments of Service, **Engineer** shall without additional compensation perform any Professional Engineering Service required as a result of **Engineer's** development of the Instruments of Service which is found to be in error or omission due to **Engineer's** negligence. However, any Professional Engineering Services required or occasioned for the convenience of **County** after approval of a final Instruments of Service shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of **Engineer's** Instruments of Service as conforming, accepted, or approved under this Agreement, the decision of the **County Judge** shall be final and binding on **Engineer**, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

## Section VII Revision to Instruments of Service

**Engineer** shall make, without expense to **County**, such revisions to the Instruments of Service as may be required to correct negligent acts, errors or omissions that result from **Engineer's** Scope of Service herein so the Instruments of Service meets the Quality Assurance Plan, but after the approval of the Instruments of Service any revisions, additions, or other modifications made at **County's** request which involve extra services and expenses to **Engineer** shall entitle **Engineer** to additional compensation for such extra services and expenses, provided however, that **Engineer** agrees to perform any necessary corrections to the Instruments of Service, which are found to be negligent acts, error or omission as a result of the **Engineer's** development of the Instruments of Service, at any time, without additional compensation. Nothing in this Section or any other provision of this Agreement shall require **Engineer** to make any revisions or changes to the PS&E developed and provided by **Designer** except as necessary to comply with the desired *Scope of Services* as detailed in Exhibit IX related to performance of duties necessary to comply with Part III Section E of the Texas Pollution Discharge Elimination System (TPDES) permit TXR150000. The **Engineer**

shall be considered "engaged", as described in Section 137.33 of the Texas Engineering Practice Act and Rules Concerning The Practice of Engineering and Professional Engineering Licensure, upon execution of this Agreement by all parties. In the event of any dispute over the classification of *Engineer's* services as Basic or Additional Services under this Agreement, the decision of the *County Judge* shall be final and binding on *Engineer*, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

### Section VIII Engineer's Responsibility and Liability

- A. *Engineer* covenants to undertake no task in which a professional license or certificate is required unless it or someone under its direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, *Engineer* shall inform *County* of such event within five working days.
- B. *Engineer* 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, applicable to the Scope of Services described Exhibit IX to this Agreement, properly waivable by the *County Judge*.
- C. **ENGINEER SHALL INDEMNIFY, AND HOLD HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES FROM AND AGAINST ALL 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 ENGINEER OR ANY OF ITS SUBCONSULTANTS IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT; PROVIDED, HOWEVER, ENGINEER SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF ANY OTHER PARTY, OTHER THAN ITSELF OR THAT OF ITS SUBCONSULTANTS AND FOR A SUBCONSULTANT ONLY AS A DIRECT RESULT OF NEGLECTED ACTS, ERRORS, OR OMISSIONS WHILE PERFORMING PROFESSIONAL SERVICES PURSUANT TO THE SCOPE OF THIS AGREEMENT.**
- D. *Engineer's* opinions of probable *Project* cost or construction cost represent *Engineer's* professional judgment as a professional familiar with the construction industry, but *Engineer* does not guarantee that proposals, bids, or the construction cost, itself, will not vary from *Engineer's* opinions of probable cost and shall not be responsible for proposals, bids, or the construction costs, should they vary from *Engineer's* opinions of probable costs.
- E. *Engineer* shall perform all services and responsibilities required of *Engineer* under this Agreement using at least that standard of care which a reasonably prudent engineer in Texas, who is licensed by the State Board of Engineers or the State Board of Registered Professional



Surveyors, as applicable, would use in similar circumstances.

- F. **Engineer** 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 **Engineer** 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 **Engineer** and professional personnel.
- G. All employees of **Engineer** shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of **Engineer**, 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**.
- H. **Engineer** shall furnish all equipment, transportation, supplies, and materials required for its performance of the Professional Engineering Services as set forth in the Scope of Services attached as Exhibit IX to this Agreement.
- I. **Engineer** shall place its Texas Professional Engineer's seal of endorsement on all documents of Instruments of Service furnished to **County**, as required by law.
- J. **Engineer** is an independent contractor under this Agreement. Neither it nor any officer, agent or employee of **Engineer** shall be classified as an employee of **County**.
- K. **Safety.** The **Engineer** shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the Project construction, for the acts or omissions of the contractor, subcontractors, any of their agents or the subcontractors' employees, or any other person performing any of the work or for the failure of such persons to carry out the work in accordance with the contract documents; provided however, the **Engineer** shall not be relieved from its obligation to notify the County or any other applicable authority of any unsafe condition resulting from an act, omission or failure on the part of the construction if **Engineer** becomes aware of such an unsafe condition in the normal course of providing its Scope of Services or as otherwise required by the **Engineer's** professional duties as prescribed by the Rules of Professional Practice promulgated by the Texas Board of Professional Engineers.

**Engineer's** obligation to report any observed unsafe job conditions to the County shall not make **Engineer** responsible for construction job site safety, the responsibility of which shall remain solely with the construction contractor. **Engineer's** obligation to report unsafe job conditions to the County runs solely to the County. There are no third party beneficiaries intended by this obligation, in particular, construction contractor's employees do not have the right to rely on **Engineer's** obligation to report unsafe job conditions to the County so as to provide for a safe work environment for construction contractor's employees.

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No provision of this Agreement requires *Engineer* to make exhaustive inspections of the contractor's work under the construction contract for the *Project*. *Engineer's* inspections, observations, and documentation of construction activities and work is to confirm the construction's conformance with the PS&E and acceptable engineering standards and practices.

The County shall enter into a third party contract for the construction of the project. The contract between the County and the contractor shall require the contractor to indemnify the *Engineer* and name the *Engineer* as additional insured under contractor's commercial general liability, builder's risk, and umbrella liability coverage for the insured liabilities assumed by the contractor. The contractor's insurance coverage shall be primary insurance for the insured liabilities under the Agreement with respect to the contractor, its officers, directors, agents and consultants including the *Engineer*.

The construction contractor retained by the County has sole responsibility for providing materials, means, and methods of construction, for controlling the individual work area and safety of said areas for all parties.

The *Engineer* shall be responsible for taking all appropriate steps to ensure the safety of its employees in connection with its performance of the services provided under this agreement.

#### Section IX Ownership of Documents

- A. Any and all Instruments of Service, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by *Engineer* 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 *Engineer* retaining a copy. ✓
- B. Any reuse by *Engineer* of any such documents described in subsection A above, without the specific written consent of *County* shall be at *Engineer's* sole risk and without liability or legal exposure to *County*. Should *Engineer* be terminated, *Engineer* shall not be liable for *County's* use of partially completed Instruments of Service on this *Project* or any other project, except to the extent such Instruments of Service were deemed complete or otherwise "Accepted" or "Approved" as provided herein by *Engineer*, or Surveyor, as applicable, as specified by professional standards.
- C. *Engineer* will not be responsible for any use or any modifications to the Instruments of Service described in subsection A performed by any entity without the specific written consent of *Engineer*. Any modification by an entity or individual other than the *Engineer* as described in this paragraph shall be made in accordance with all applicable professional standards and shall necessitate the removal of the *Engineer's* Texas Professional Engineer's seal of endorsement from all such modified documents.



**Section X**  
**Maintenance of and Right of Access to Records**

- A. **Engineer** agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the **Project** 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. **Engineer** 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 **Engineer**, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. **Engineer** agrees that **County** shall have access during normal working hours to all necessary **Engineer** 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 **Engineer** reasonable advance notice of intended audits.
- C. **Engineer** 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. **Engineer** and sub-consultant agree to photocopy such documents as may be requested by **County**. **County** agrees to reimburse **Engineer** for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed. **County** also agrees to compensate **Engineer** for services performed pursuant to this Section as requested by **County**, or by a third-party pursuant to a validly determined Texas Public Information Act request. For any such services, **Engineer** shall receive the additional services compensation described in Exhibit IV, which is attached hereto and made a part hereof.

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

*Engineer* 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:

ENGINEER: CP&Y, Inc.  
10415 Morado Circle, Building I, Suite 200  
Austin, TX 78759  
Attn: James J. Roohms, P.E.

COUNTY: Williamson County Judge  
Dan Gattis (or successor)  
710 Main Street, Suite 101  
Georgetown, Texas 78626

with copy to: Hal C. Hawes  
Legal Advisor  
Office of Williamson County Judge  
710 Main Street, Suite 200  
Georgetown, Texas 78626

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.

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- F. **Insurance Requirements.** *Engineer* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VIII, 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 *Engineer* is delinquent in the payment of property taxes related to property located in Williamson County at the time of invoicing, *Engineer* 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 *Engineer* 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 *Engineer* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Engineer* 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.** *Engineer* shall provide to *County Judge* upon submittal of *Engineer'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.** *Engineer* 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 **Engineer** 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 **Engineer** becomes aware of the occurrence of any accident or other event on or relating to the Project which results in, or might result in, injury to the person or property of any third person (other than an employee of the **Engineer**), whether or not it results from or involves any action or failure to act by the **Engineer** or any employee or agent of the **Engineer** and which arises in any manner from the performance of this Agreement, the **Engineer** 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 **Engineer** shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the **Engineer**, 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 **Engineer's** performance of work under this Agreement.
- M. **Definition of Engineer.** The term "**Engineer**" 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.** All of the Exhibits 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 **Engineer** 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 the Professional Engineering 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 (31<sup>st</sup>) 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 **Engineer**, I acknowledge by my signature below that I have read and understand the above paragraphs and that **Engineer** 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 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 to this Agreement.
- X. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between **County** and **Engineer** 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 **Engineer**. 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.
- Y. **No Third-Party Beneficiaries.** No provision of this Agreement shall be construed to establish a cause of action in favor of any party other than the parties hereto. It is the express intention of the **County** and the **Engineer** that there be no third-party beneficiaries to this Agreement.
- Z. **Waiver of Consequential Damages.** **County** and **Engineer** agree to waive recovery of any consequential damages which arise as a proximate result of a breach of this Agreement.

EXECUTED this 18th day of March, 2011.

THE ENGINEER:

CP&Y, INC.:

BY: 

Printed Name: James J. Roohms

Title: Senior Vice President

THE COUNTY:

WILLIAMSON COUNTY:

BY: 

Printed Name: Dan A. Gattis, County Judge

Date: 03-29-11

Reviewed as to Form By:

\_\_\_\_\_  
Legal Advisor to the Williamson  
County Commissioners Court

\_\_\_\_\_  
County Auditor



## EXHIBIT I

### COMPENSATION FOR PROFESSIONAL ENGINEERING 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 ~~\$100,000.00~~.
- 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 III.
- 1.3 *Engineer* shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement at the *Engineer's* invoice cost.

#### SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 *Engineer* 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 III 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 *Engineer* 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 Exhibit II to authorize the *Engineer* 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 *Engineer*. 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 *Engineer'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 *Engineer* have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization. The *Engineer* shall promptly notify the *County* of any event which will affect completion of the Work Authorization, although such notification shall not relieve the *Engineer* 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 **Engineer** 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 IV.
- 4.2 **Engineer** shall be compensated for extra services not included in the Scope of Services described in the Agreement on the basis specified in Exhibit IV; however, **Engineer** shall not be compensated for work made necessary by **Engineer's** negligent acts, errors or omissions.
- 4.3 The maximum amount payable under this Agreement without modification (the "**Compensation Cap**") is \$300,000.00, 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, **Engineer** 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. .
- 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 **Engineer**.
- 5.5 Payments for Direct and Reimbursable Expenses will be made in compliance with the approved 2009-2010 Budget Order, as amended. The Budget Order can be viewed on the Williamson County web site at [www.wilco.org](http://www.wilco.org).

EXHIBIT II

WORK AUTHORIZATION NO. Sample

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 CP&Y, Inc. (*the "Engineer"*).

**Part 1.** The *Engineer* will provide the following engineering services:

Professional Engineering Services for Construction Inspection and/or Observation on \_\_\_\_\_ (*the "Project"*).

**Part 2.** The maximum amount payable for services under this Work Authorization without modification is \$\_\_\_\_\_.

**Part 3.** Payment to the *Engineer* 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 \_\_\_\_\_, 201\_\_.

ENGINEER:  
CP&Y, Inc.

COUNTY:  
Williamson County, Texas

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

By: Sample  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**EXHIBIT III**

Hourly Rates

<u>Position</u>	<u>On-Site</u>
3. Senior Inspector	\$100.00 /hr.

OK  
m 3/22/2011



**EXHIBIT IV**

**COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES**

1. The fees described in Exhibits I and II to this Agreement shall provide compensation to ***Engineer*** for the Professional Engineering Services 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 ***Engineer*** 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 ***Engineer's*** services as either basic or additional services, the decision of the ***County Judge*** shall be final and binding.

**EXHIBIT V**

**SERVICES TO BE PROVIDED BY COUNTY** The County will assist the Engineer by providing assistance, service, or data items as required to advance the completion of assigned work authorizations.

- Provide existing data files, to include but not limited to:
  - Survey data;
  - Roadway construction plans, design documents for the construction of *the Project*;
  - Right-of-Way mapping;
- Approved environmental documents.
- Applicable special specifications, special provisions, and unit price bid tabulation.

Provide timely review, comment or direction, as required, to aid the Engineer in completing an assigned task or maintaining the established project schedule. The County will provide the *Engineer* with:

- Temporary shared offsite location with internet access.
- Offsite work space to complete and store records.
- Access to combination color printer/copier/scanner.

**EXHIBIT VI**

**PROCEDURES FOR TERMINATION OR SUSPENSION**

Procedures for *Engineer* 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, *Engineer* 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, *Engineer* shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination.
2. Copies of all Instruments of Service prepared under this Agreement prior to the effective date of termination shall be delivered to *County* as a pre-condition to final payment. The foregoing language notwithstanding, *County* and *Engineer* agree that *Engineer*, in its sole discretion, will be allowed to sign and seal such Instruments of Service, or place any other appropriate comment on the Instruments of Service, as appropriate for the phase of preparation of the Instruments of Service as more fully set out in Section 137.33 of the Texas Board of Professional Engineer's Rules Concerning the Practice of Engineering, effective as of the date of delivery of the Instruments of Service.
3. Upon the above conditions being met, *County* shall pay *Engineer* for approved services actually performed under this Agreement, less previous payments.
4. Failure by *Engineer* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Engineer* of any and all rights or claims to collect the fee that *Engineer* may rightfully be entitled to for services performed under this Agreement.

Procedures for *Engineer* 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, *Engineer* 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 Instruments of Service prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to *County*, but shall be retained by *Engineer* unless requested by *County*.
2. During the period of suspension, *Engineer* may submit the above-referenced statement to *County* for payment of the approved services actually performed under this Agreement, less previous payments.

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

1. In the event that **Engineer** exercises such right to terminate, within thirty (30) days after receipt by **County** of **Engineer's** Notice of Termination, **Engineer** 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 Instruments of Service shall be delivered to **County** as a pre-condition to final payment. Upon the above conditions being met, **County** shall pay **Engineer** for approved services actually performed under this Agreement, less previous payments. . The foregoing language notwithstanding, **County** and **Engineer** agree that **Engineer**, in its sole discretion, will be allowed to sign and seal such Instruments of Service, or place any other appropriate comment on the Instruments of Service, as appropriate for the phase of preparation of the Instruments of Service as more fully set out in Section 137.33 of the Texas Board of Professional Engineer's Rules Concerning the Practice of Engineering, effective as of the date of delivery of the Instruments of Service.
3. Failure by **Engineer** to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by **Engineer** of any and all rights or claims to collect the fee that **Engineer** may rightfully be entitled to for services performed under this Agreement.



**EXHIBIT VII**

**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. **Engineer** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. **Engineer** 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. **Engineer** 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. **Engineer** will, in all solicitations or advertisements for employees placed by or on behalf of **Engineer**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Engineer** will send to the labor union representative or workers with which it 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 **Engineer's** obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. **Engineer** 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**, **Engineer** 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. **Engineer** 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 **Engineer'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 **Engineer** 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. *Engineer* 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. *Engineer* 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 *Engineer* becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by *County* or Federal Agency, *Engineer* may request *County* and United States to enter into such litigation to protect the interest of the United States.



**EXHIBIT VIII**

**INSURANCE REQUIREMENTS**

During the life of this Agreement, *Engineer* 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 million per occurrence and \$2 million 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 million per occurrence and \$2 million in the aggregate. *Engineer* 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 million.
- E. In the event *Engineer* is self-insured in connection with any or all of the above-required insurance policies, *Engineer* 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.

*Engineer* 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*. *Engineer* 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 *Engineer* 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. *Engineer* shall furnish *County* with a certification of coverage issued by the insurer. *Engineer* shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES REQUIRED PURSUANT TO PARAGRAPH B, ABOVE, 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 *Engineer*, 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.

**EXHIBIT IX**

**SCOPE OF SERVICES**

**FOR PROFESSIONAL ENGINEERING SERVICES**

THE FOLLOWING 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 ENGINEER SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE ENGINEERING PROFESSIONAL TO BE DETERMINED MUTUALLY BY COUNTY AND ENGINEER AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN EXHIBIT IV AND IN A MANNER CONSISTENT WITH THE TEXAS BOARD OF PROFESSIONAL ENGINEER'S RULES CONCERNING THE PRACTICE OF ENGINEERING, EFFECTIVE AS OF THE RELEVANT DATE.

The *Engineer* will provide Professional Engineering Services for the *Project*, as set forth below.

Services performed will include the appropriate records and documentation in accordance with TxDOT and Federal requirements.

**Professional Engineering Construction Management**

- Verify receipt of the Contractor's schedule of operations
- Manage the Request for Information (RFI) process.
- Negotiate and make recommendations for Change Orders. Prepare Change Orders for execution.
- Evaluate and provide advice to the County on the approval of contractor's CPM schedules.
- Maintain a current approved set of construction contract documents.
- Review and provide recommendation of acceptance to the County on the Contractor's monthly pay estimate. Review and verify quantities of work performed and materials used.
- Manage Contractor receipt and dispersal of Contractor submittals to the *GEC*, then back to the Contractor.
- Revise or update the storm water pollution prevention plan in accordance with TPDES Permit TXR150000 Part III Section E.



- Sign, Seal and Date changes to *the Designer's* plan sheets representing the requirements of TPDES Permit TXR 150000 Part III Section F 1. (f) as necessary to comply with TPDES TXR 150000 Part III Section E.
- Identify and advise the County in the resolution of construction issues that arise.
- Provide advice to the County in dispute negotiations and claim resolutions.
- Monitor utility relocation/adjustments for compliance with approved plans for the *Project*.
- Monitor Compliance with DBE requirements of construction contract provisions.
- Provide vehicles, communication devices (i.e. cell phones, radios), computers, office supplies and internet service, as needed.
- Review and provide recommendation to the County on the acceptance of As-built drawings provided by the Contractor.
- Verify line, grade and dimensions of roadways and structures as deemed necessary.
- Observe to see if specified procedures, specified in the plans and specifications are being followed.
- Advise the Contractor and request corrective action be taken, if an inspection reveals that work has not been properly performed.
- Re-inspect non-conforming work.
- Evaluate and document the Contractor's operations and production with respect to quality and progress.
- Verify and perform spot checks on quantities being identified, measured, recorded and verified by comparisons against plan, contract quantities and dimensions.
- Receive and transmit, to the Manager, the Contractors "trench safety plan" prepared and sealed by a registered professional engineer.
- Evaluate damages to existing vegetation the formula in Section XXV. **Tree and Plant Protection** of the Special Conditions.

#### **Provide Reports of Construction Activities**

- Perform a review of the construction of the *Project* to monitor compliance with the *Designer's* plans and specifications and document construction activities using daily reports, journal, logs, or other, as necessary or required.
- Provide digital and video photo logging of project activities.

- Perform inspections in accordance with the environmental provisions of the PS&E, relating to the SW3P and provide reports to the County containing the results of the inspection.
- Perform monthly inspections of the implemented Traffic Control Plan of the PS&E, provide inspection and reports to the County.
- Provide advice to the County on modifications to the Traffic Control Plans to be provided by *the Designer*.
- Develop project progress meeting minutes and distribute to attendees.
- Provide weekly report of the construction project progress to the County and the GEC.
- Provide reports of the results of tests performed on materials used in construction.
- Provide non-conformance reports as needed.
- Provide reports of Contractor compliance with DBE provisions of construction contract.
- Provide reports of Contractor compliance with Wage Rate provisions of construction contract at the end of the project.
- Provide notification of lane closures to GEC and the County, and others as necessary, received from the Contractor.
- Provide report of accidents in accordance with Section XI L. of the Agreement.

### **Meetings and Record Keeping**

- Attend the Pre-Construction Conferences.
- Attend project progress meetings.
- Maintain all records as required.
- Maintain a status report of change orders, RFIs, barricade inspection reports, schedule updates, shop drawing review and time extensions.
- Maintain "redline" drawings to document the changes made to the constructed project. These redline drawings will be used to verify the Contractor's As-Built plan submittal.
- Verify transmittal, by the Contractor to the County, of an affidavit stating that all bills related to any work, labor, equipment or supplies have been paid and that there are no outstanding claims or bills remaining. Review and verify submission, to the Engineer, of the "As-Built" drawings dated and signed by the Contractor

and his project superintendent prior to final acceptance.

### **Materials Testing**

- Order or Verify contractor's order of materials sampling and testing in accordance with the "Quality Assurance Program".
- Receive, review, verify, and log all "project test" or QC test results from the Contractor.
- Request, Validate, and record QC/QA test results by verification tests from independent samples.
- Report to the Manager on the contractors' compliance with the identification of test results with the test number, date of testing, at the station and elevation of the test on the appropriate plan sheet.
- When test requirements are not met, order the performance of independent material testing in accordance with the "Quality Assurance Program".
- Receive from the Contractor, and verify compliance with specifications, Manufacturer Certificates of Compliance of each and every specified material or manufactured equipment item.

### **Other**

### **Exclusions**



**EXHIBIT X**

**ENGINEER'S QUALIFICATIONS STATEMENT**

DATE (MM/DD/YYYY)

3/21/2011

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**

## PRODUCER

McLaughlin Brunson Insurance Agency, LLP  
6600 LBJ Freeway, Suite 220  
Dallas TX 75240  
(214) 503-1212 (214) 503-8899

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

CP&amp;Y, Inc.

1820 Regal Row, Suite 200  
Dallas TX 75235

## INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Travelers Lloyds Ins. Co.

INSURER B: Travelers Indemnity Company

INSURER C: XL Specialty Insurance Co.

INSURER D: Travelers Prop Cas of America

INSURER E: St. Paul Fire &amp; Marine Ins Co

## 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	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	PACP1951L895 Valuable Papers \$2,245,000	6/1/2010	6/1/2011	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 10,000
		<input checked="" type="checkbox"/> Contractual Liab				PERSONAL & ADV INJURY \$ 1,000,000
		<input checked="" type="checkbox"/> Severability of Int.				GENERAL AGGREGATE \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COM/OP AGG \$ 2,000,000
D		AUTOMOBILE LIABILITY	BA3865M855	6/1/2010	6/1/2011	
		<input checked="" type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person) \$
		<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY				
		<input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
						OTHER THAN EA ACC AGG \$
E		EXCESS/UMBRELLA LIABILITY	QK06501840	6/1/2010	6/1/2011	
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$ 10,000,000
		<input type="checkbox"/> DEDUCTIBLE				AGGREGATE \$ 10,000,000
		RETENTION \$				\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB 5609Y775	1/1/2011	1/1/2012	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
		If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ 500,000
						E.L. DISEASE - EA EMPLOYEE \$ 500,000
C		OTHER Professional Liab	DPR9684961	4/1/2010	4/1/2011	E.L. DISEASE - POLICY LIMIT \$ 500,000
						\$3,000,000 Per Claim/Annual Aggregate

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

The claims made professional liability coverage is the total aggregate limit for all claims presented within the policy period and is subject to a deductible. Williamson County is named as additional insured on the general and auto liability as required by contract.

## CERTIFICATE HOLDER

Williamson County Judge  
Attn: Dan Gattis (or successor)  
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 10 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

*Pete J. McLaughlin*

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.