CEI Observer Services Checklist



Prior to Initiation of Work

- Signed and Executed Agreement
- d Scope of Services − Appendix A
 - o Exhibit V Services to be provided by County
 - o Exhibit IX Services to be provided by Engineer
 - o Exhibit C Work Schedule
 - o Exhibit D Fee Schedule
- Production Schedule Exhibit IV
- Hourly Rates of Engineer Exhibit III
- Work Authorization Exhibit II Template
 - o Supplemental Work Authorization for Additional Work (if applicable)
- □ Data to be provided to Engineer by County
 - o Plans
 - o Maps
 - o Studies
 - o Reports
 - o Field Notes
 - Statistics
 - o Computations
 - o Other:
- pre-qualified list Contractors Qualification Statement - Appendix B
- Insurance
 - φ Worker's Compensation
 - Commercial General Liability Insurance
 - Automobile Liability Insurance
 - b Professional Liability Errors and Omissions Insurance
 - o Self Insurance Documentation
 - o Insurance Certificates for Subcontractors and/or Sub-consultants
 - o 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.	
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- □ 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 Cn File
 □ Invoice for Sand
- - o Supporting Documentation
 - o Report of Completion Percentage
- □ Invoice for Reimbursables
 - o Proof of prior payment by Engineer of Reimbursables

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 HDR Engineering, Inc. (the "Engineer").

WHEREAS, County proposes to construct various transportation projects;

WHEREAS, *County* desires to obtain Professional Engineering Services for inspection of the construction phase of the project known as <u>IH-35 Northbound Frontage Road</u> (*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, *Engineer* agrees to adhere to the conditions as set forth in the Master Pass-Through Toll Agreement whereby County has entered into a Pass-Through Toll Agreement with the Texas Department of Transportation which is a part of and attached to this Agreement as Exhibit XI. In such Master Pass-Through Toll Agreement, the County is referred to as the DEVELOPER, and the Texas Department of Transportation is referred to as the DEPARTMENT.

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. <u>ENGINEER</u> SHALL INDEMNIFY, AND HOLD HARMLESS <u>COUNTY</u>, 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 <u>ENGINEER</u> OR ANY OF ITS SUBCONSULTANTS IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT; PROVIDED, HOWEVER, <u>ENGINEER</u> SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENT ACTS, ERRORS, OR OMMISSIONS OF ANY OTHER PARTY, OTHER THAN ITSELF OR THAT OF ITS SUBCONSULTANTS AND FOR A SUBCONSULTANT ONLY AS A DIRECT RESULT OF NEGLETENT 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.

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 provide 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: HDR Engineering, Inc.

810 Hester's Crossing, Suite 120 Round Rock, Texas 78681-7839 Attn: Howard Caldwell, P.E.

COUNTY: Williamson County Judge

Dan Gattis (or successor) 301 S.E. Inner Loop, Ste. 109 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.

- 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

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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 (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.
- U. Texas Public Information Act. To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- V. **Acknowledgement.** As a duly authorized representative of **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.
- AA. *Master Pass-Through Toll Agreement. Engineer* agrees to adhere to the conditions as set forth in the Master Pass-Through Toll Agreement whereby County has entered into a Pass-Through Toll Agreement with the Texas Department of Transportation, which is a part of and attached to this Agreement as Exhibit XI. In such Master Pass-Through Toll Agreement, the County is referred to as the DEVELOPER, and the Texas Department of Transportation is referred to as the DEPARTMENT.

EXECUTED this 3th day of Jebruary, 2013.

THE ENGINEER:	THE COUNTY:
HDR Engineering, Inc.	WILLIAMSON COUNTY:
BY:	Printed Name: Dan A. Gattis
Title: Senior Vice President	Title: County Judge

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 \$\(\) \(
- 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 \$\frac{1}{635,305.00}\$, 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 2012-2013 Budget Order, as amended. The Budget Order can be viewed on the Williamson County web site at www.wilco.org.

EXHIBIT II

WORK AUTHORIZATION NO. TEMPLATE

	to the terms and conditions of the Agreement entered into tas, a political subdivision of the State of Texas, (the (the "Engineer").
Part1. The Engineer will provide the follow	owing engineering services:
	(the "Project"):
Part 2. The maximum amount payable modification is \$	for services under this Work Authorization without
Part 3. Payment to the <i>Engineer</i> for the se made in accordance with the Agreement.	rvices established under this Work Authorization shall be
	become effective on the date of final acceptance of the, unless extended by a
Part 5. This Work Authorization does provided under the Agreement.	not waive the parties' responsibilities and obligations
Part 6. This Work Authorization is hereby	y accepted and acknowledged below.
EXECUTED this day of	, 201
ENGINEER: HDR Engineering, Inc.	COUNTY: Williamson County, Texas
By:	By:
Signature	Signature
Printed Name	Printed Name
Title	Title

EXHIBIT III

HDR Engineering, Inc. (Engineer)

		ŀ	lourly Rates		
	<u>Position</u>	On-Site		Off-Si	<u>te</u>
1.	Principal/Project Manager			\$257.95	/hr.
2.	Resident Rep./Engineer	\$162.15	/hr.	\$179.35	/hr.
3.	Senior Inspector	\$124.21	/hr.	\$137.39	/hr.
4.	Environmental Compliance	\$137.33	/hr.	\$151.90	/hr.
5.	Scheduler/Project Controls	\$176.17	/hr.	\$194.85	/hr.
6.	Records Keeper	\$77.27	/hr.	\$85.47	/hr.
7.	Administrative Technician			\$103.81	/hr.

OK 1/30/2013

Direct Expenses

Mileage IRS
Approved rate/mile
Field Supplies At cost
Printing and copying At cost

Inland Geodetics, LP (Survey

Sub-Consultant)

1.	Project Manager	\$130.00	/hr.
2.	Surveyor (RPLS)	\$125.00	/hr.
3.	Survey Tech	\$87.00	/hr.
4.	2-Person Crew	\$130.00	/hr.
5.	2-Person GPS Crew	\$225.00	/hr.
6.	3-Person Crew	\$150.00	/hr.
7.	Clerk	\$50.00	/hr.

Rodriguez Engineering Labratories (Materials Testing Sub-Consultant)

1. Field Technician (2 hr. minimum)

1.1 Junior Soil Technician	\$49.00	/hr
1.2 Senior Technician (Soils or Concrete)	\$49.00	/hr
1.3 Concrete Technician (ACI Grade I)		/hr
1.4 Asphalt Technician		
1.4.1 TxDOT Certified Technician (Level IA and IB)	\$49.00	/ hr
1.4.2 TxDOT Certified Technician (Level II)	\$55.75	/hr

2. Field Testing Equipment (2 hr. minimum, technician time not included)

2.1 Vehicle \$0.51 / mile

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2.2 Concrete/Asphalt Coring Equipment		\$35.00	/ hr
2.2.1 Core Bit Charges			
2.2.1.1	3 inch diameter core	\$4.00	/ inch
2.2.1.2	4 inch diameter core	\$5.00	/ inch
2.2.1.3	6 inch diameter core	\$7.00	/ inch

EXHIBIT III



	. 1	50/000
3. Testing of Soils and Base Materials		
3.1 Sampling	\$50.00	/ hr
3.2 Field Nuclear Density (TEX-115-E)	\$36.00	/ ea
3.3 Sample Preparation (TEX-101-E)	\$52.00	/ ea
3.4 Natural Moisture Content (TEX-103-E)	\$18.00	/ ea
3.5 Sieve Analysis (TEX-110-E)	\$65.00	/ ea
3.6 Atterberg Limits (Liquid and Plastic Limits) (TEX-104-E, TEX-105-E, TEX-106-E)	\$65.00	/ ea
3.7 Percent Passing No. 200 Sieve (TEX-111-E)	\$42.00	/ ea
3.8 Bar Linear Shrinkage of Soils (TEX-107-E) if required by spec	\$55.00	/ ea
3.9 Moisture Density Relationship (TEX-113-E) Compaction Test	\$230.00	/ ea
3.10 Moisture Density Relationship (TEX-114-E, Part I) Compaction Test	\$230.00	/ ea
3.11 Moisture Density Relationship (TEX-114-E, Part II) Compaction Test	\$255.00	/ ea
3.12 Texas Triaxial Compression Test on Base Material TEX-117-E, Part II;	\$1,814.00	
Including the following:		
3.13 Molding, Curing, and Testing 8 Specimens	\$1,150.00	/ ea
3.3 Sample Preparation (TEX-101-E)	\$52.00	/ ea
3.5 Sieve Analysis (TEX-110-E) 3.6 Atterberg Limits (Liquid and Plastic Limits) (TEX-104-E, TEX-105-E,	\$65.00	/ ea
TEX-106-E)	\$65.00	/ ea
3.8 Bar Linear Shrinkage of Soils (TEX-107-E)	\$52.00	/ ea
3.9 Moisture Density Relationship (TEX-113-E) Compaction Test	\$230.00	/ ea
3.14 Wet Ball Mill (TEX-116-E)	\$200.00	/ ea
3.15 Soil Specific Gravity (TEX-108-E)	\$61.00	/ ea
3.16 Soil Lime Compression Test (TEX-121-E)	\$67.00	/ ea
3.17 Resistivity of Soils (TEX-129-E)	\$90.00	/ ea
3.18 Lime Series Curve (TEX-112-E)	\$90.00	/ point
3.19 pH of Soil (TEX-128-E)	\$49.00	/ ea
4. Testing of Concrete		
4.1 Sampling	\$49.00	/ hr
4.2 Aggregate Gradation Analysis (TEX-401-A)	\$65.00	/ ea
4.3 Specific Gravity of Aggregate (TEX-403-A) (Includes Absorption)	\$83.00	/ ea
4.4 Unit Weight of Aggregate	\$33.00	/ ea
4.5 Abrasion Test (TEX-410-A)	\$220.00	/ ea
4.6 Decantation (TEX-406-A)	\$30.00	/ ea
4.7 Organic Impurities (TEX-408-A)	\$45.00	/ ea
4.8 Soundness, Sodium, or Magnesium (TEX-411-A)	\$65.00	/ cyc

EXHIBIT III

4.9 Concrete Cylinder Compressive Strength (TEX-418-A)	\$23.00	/ ea
4.10 Beam Flexural Strength (TEX-420-A or TEX-448-A)	2 9 5	/ ea
4.11 Coarse Aggregate Angularity (Superpave)	\$67.00	/ ea
4.12 Fine Aggregate Angularity (Superpave)	\$67.00	/ ea
4.13 Flat, Elongated Particles (TEX-224-F)	\$67.00	/ ea
4.14 Deleterious Materials (Clay Lumps/Friable Part I) (TEX-413-A)	\$60.00	/ea
4.15 Sand Equivalent (Clay Content) (TEX-203-A)	\$78.00	/ ea
5. Testing of HMAC (Testing Performed at OVR Lab)		
	#40.00	/ la a
5.1 Sampling		/hr
5.2 Specimen Molding, Bulk Density (3 per set)	\$122.00	/ ea
5.3 Gradation and Asphalt Content (TEX-236-F)	\$205.00	/ ea
5.4 Maximum Theoretical Specific Gravity, Rice Method (TEX-227-F)	\$55.00	/ ea
5.5 Specific Gravity, Bulk	\$22.00	/ea
5.6 Sand Equivalent (TEX-203-F)	\$78.00	/ea
6 Engineering Consultation		
6. Engineering Consultation	A.A	
6.1 Senior Consultant/Project Principal	\$133.50	/ hr

Technician time over 2 hours shall be documented on the daily report.

» Transportation charges are applicable for all field testing assignments including sample pick up.

[»] Minimum call-out charge for technician and equipment is 2 hours. Charges are accrued portal to portal.

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:
 - o Survey data;
 - o Roadway construction plans, design documents for the construction of *the Project*;
 - o 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, through contract with the contractor responsible for construction of *the Project*, the *Engineer* with:

- Field Office, Type B in accordance with Item 504 of TxDOT 2004 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges including:
 - Coordinate with all impacted utility companies.
 - Minimum of 3 desks, six chairs, two filing cabinets, a conference table, a minimum of 2 closets, and a storage cabinet.
 - Combination Color printer, Copy machine, and facsimile machine no older than two years old in the field office.
 - Four telephone lines.
 - Provide DSL or better internet service.
 - 120/240 volt electrical service consisting of a minimum of four 120 volt circuits with 20 amp breakers and no more than two grounded convenience outlets per circuit. Provide a minimum of 2 double convenience outlets per room inside the structure.
 - Support and tie down the portable structures for stability.
 - Provide a permanent, fully equipped, indoor restroom, with toilet and running water.
 - Provide monthly drinking water service.
 - Provide cleaning services as needed, but at least once a week. Provide sweeping and mopping of floors, cleaning the toilet and lavatory, and emptying wastebaskets.

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.
- 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

- Perform a constructability review of the construction plans.
- Provide a Quality Assurance Plan explaining how *Engineer* proposes to manage the contract assignment and the planned interaction with the County's representatives. The QAP Manual shall contain the following Sections describing the *Engineer's* methods to produce quality in the execution of its services delivered under this agreement.
 - Introduction
 - Definitions
 - Acronyms
 - Quality Assurance Plan
 - Management Responsibility
 - Quality Service Realization

The QAP shall contain procedures that shall define how the *Engineer* will perform in the following areas:

- Control of Documents
- Records Management



- Personnel Training
- Management Review
- Resource Planning
- Request for Information Management
- Construction Contract Change Order Preparation
- Field Monitoring and Inspection
- Material Sampling and Testing
- 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 at the project site.
- Review and provide recommendation of acceptance to the County on the Contractor's monthly pay estimate.
- 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.
- Review and provide recommendation to the County on the acceptance of As-built drawings provided by the Contractor.

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.
- 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 inspections in accordance with the QAP 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 in accordance with the QAP at the end of the project.
- Provide reports of Contractor compliance with DBE provisions of construction contract at the end of the project.
- Provide reports of Contractor compliance with Wage Rate provisions of construction contract at the end of the project.
- Provide notification of lane closures to TxDOT, GEC and the County received from the Contractor.
- Provide report of accidents in accordance with Section XI L. of the Agreement.

Meetings and Record Keeping

- Attend Pre-Bid and Pre-Construction Conferences.
- Attend project progress meetings.
- Maintain all records as detailed in the QAP for delivery to the County at project completion.
- Maintain a status report of change orders, RFIs, barricade inspection reports, schedule updates, shop drawing review and time extensions.
- Maintain current set of plans and specifications at project completion.

Materials Testing

Perform materials sampling and testing in accordance with the approved QAP.

Survey

- Establish horizontal and vertical control in the field with provided data at the onset of construction.
- Review the data supplied by the County, check the horizontal and vertical control in the field, and compare the results with the supplied data. Provide compliance/noncompliance report to the County.
- Provide a field crew to check the contractor horizontal and vertical results of constructed facilities periodically for the *Project*. Provide compliance/non-compliance report to the County.

Other

Exclusions

EXHIBIT X ENGINEER'S QUALIFICATIONS STATEMENT

Pre-qualitied

EXHIBIT XI MASTER PASS-THROUGH TOLL AGREEMENT

STATE OF TEXAS

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COUNTY OF TRAVIS

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PASS-THROUGH TOLL AGREEMENT

THIS AGREEMENT is entered between the State of Texas and the Developer under Transportation Code, §222.104.

Contracting Parties:

The Department:

The Texas Department of Transportation

The Developer:

Williamson County

BACKGROUND

Texas Transportation Code, §201.103, authorizes the Department to plan and to make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §222.104, authorizes the Department to enter into pass-through toll agreements for the purpose of improving the state highway system. The Texas Transportation Commission has implemented this provision by enacting rules to be found at 43 TAC Chapter 5, Subchapter E. On March 31, 2005, the Texas Transportation Commission passed Minute Order 11003, authorizing Williamson County to construct improvements to US 79, FM 1660, IH 35/SH 29, US 183, and FM 2338. On October 27, 2005, the Texas Transportation Commission passed Minute Order 110276, authorizing the Department to enter a pass-through toll agreement with the Developer. The governing body of the Developer has authorized entering into this agreement by resolution or ordinance.

Attachment A (Location Map), Attachment B (Project Description and Scope of Work), Attachment C (Budget), *Attachment D (Project Implementation), are attached to and incorporated by reference in this agreement. The highway improvements described in Attachment B are referenced in this agreement as the Project.

AGREEMENT

1. Effective Date

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

2. Amendments

Amendments to this agreement must be in writing and executed by both parties.

3. Scope of Work

The scope of work for the Project as approved by the Texas Transportation Commission consists of constructing the improvements to US 79, FM 1660, IH 35/SH 29, US 183, and FM 2338. The scope of work is described in more detail in **Attachment B**, which is attached to and incorporated by reference in this agreement. The improvements listed in **Attachment B** will be referenced in this agreement as the Project.

4. Sources and Uses of Funds

- a. The total estimated cost of the Project is shown in **Attachment C**, which is attached to and incorporated by reference in this agreement. **Attachment C** includes expected cash contributions from each source of funding. The Department will pay for only those Project costs that have been approved by the **T**exas Transportation Commission.
- b. The Department is responsible only for securing the funding specifically identified as the responsibility of the Department on Attachment C and will make that funding available to the Developer as set forth in Attachment C. Unless this agreement is amended, the Department will not be responsible for any funding in excess of the maximum identified on Attachment C.
- c. The Developer shall be responsible for all costs associated with the Project that are not shown as the responsibility of the Department. The Developer shall be responsible for all overruns in excess of the estimated cost shown in **Attachment C** unless this agreement is amended.
- d. The Department may audit the Project at any time in good faith for the purpose of ensuring compliance with the provisions of this agreement. Upon completion of the Project, the Department or an independent auditor approved by the Department, at the Department's option, may perform an audit of the Project costs. Any funds due to the Developer, the Department, or others shall be paid by the owing party within thirty (30) days after notification that funds are due.
- e. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

5. Environmental Studies and Mitigation

Development of the Project shall comply with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, 43 TAC §2.50, and Natural Resources Code, Chapter 191.

- a. The Developer is responsible for the identification and assessment of any environmental issues associated with the development of the Project to the extent permitted by 43 TAC §2.50 and 23 CFR Part 771. The Department and FHWA will independently evaluate all environmental documents and will fulfill all responsibilities assigned to them by 23 CFR Part 771.
- b. Unless otherwise specified in **Attachment D** and except to the extent that the Department will have already met environmental requirements on the date this agreement is executed, the Developer is responsible for the cost of all environmental permitting, mitigation, remediation, and compliance.
- c. Unless otherwise specified in Attachment D, the Developer is responsible for providing for all public meetings and public hearings required for development of the environmental decision; for preparation of the public meeting and public hearing summary and analysis; for comment and response reports; and for certifying that a

hearing has been held in accordance with 43 TAC §2.43, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. Public hearings will be held in compliance with all applicable federal and state laws. Public hearings may not be held before environmental document approval is received or before approval of the schematic for any highway improvement that is part of the Project.

- d. The Developer is responsible for the preparation of all documents required for the environmental clearance of the Project.
- e. The Developer shall provide the Department with final drafts of all necessary requests for permits, reports, and findings relating to the Natural Resources Code, Chapter 191, and Section 106 of the National Historic Preservation Act, and the Department is responsible for making all necessary filings with the appropriate agencies. The Department is responsible for all coordination under those acts and will provide copies of that coordination to the Developer. The Developer is responsible for obtaining all other permits and is responsible for obtaining all permits and approvals resulting from changes that occur after environmental approval is first obtained, except as otherwise required by law or by agreement between the Department and a state or federal agency. The Department is responsible for obtaining those approvals in accordance with law or with the Department's agreements with those agencies.
- f. Before construction is begun, the Developer shall provide the Department with written certification and documentation showing that all required environmental permits, issues, and commitments have been or will be completed. The Developer will provide the Department with copies of all permit applications and approvals from each regulatory agency with environmental jurisdiction over the Project.
- g. All environmental reports and findings shall comply with the latest version of the Department's manuals. The Developer shall provide the Department with physical and electronic copies of all environmental documentation in a format approved by the Department.

6. Right of Way and Real Property

- a. The Developer is responsible for the provision and acquisition of any needed right of way or real property to be placed in the State's name. The Developer shall also secure and provide the Department with easements over any other land in addition to normal highway right of way as indicated on the right of way map. This property is referenced in this agreement as New Right of Way.
- b. Except as otherwise authorized by applicable state and federal policy and regulations for early acquisition, the Developer shall not proceed with the acquisition of the required right of way until the public involvement and environmental clearance procedures have been completed and right of way maps and field notes have been prepared. To the extent authorized by applicable state and federal policy and regulations for early acquisition and entirely at its own risk, the Developer may proceed with the acquisition of the required right of way before the public involvement and environmental clearance procedures have been completed and right of way maps and field notes have been prepared.
- c. The Developer must comply with all applicable state and federal laws, regulations, policies, and procedures including the requirements of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq. Documentation to support compliance must be maintained. The Developer must obtain advance approval from the Department for any variance in

- established procedures. The Department's executive director may exercise discretion in authorizing an alternative procedure if it is sufficient to discharge the Department's responsibilities for acquiring real property.
- d. The Developer is responsible for any required relocation assistance along the route of the New Right of Way covered by this agreement, as may be determined to be eligible under the relocation assistance program. The relocation assistance plan must provide reasonable time frames for orderly relocation of residents and businesses on the Project. All costs associated with the relocation assistance, including payments to displacees, will be assumed by the Developer.
- e. The Department may monitor and audit the Developer's acquisition of right of way on the Project at any time. On request, the Developer shall furnish the Department with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If the Department determines that right of way maps, field notes, parcel plats, appraisals, access designations, acquisition documentation, relocation assistance benefits, or any other acquisition requirement is not in compliance with this agreement, the Developer shall take all necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Developer.
- f. The Department will reimburse the Developer for right of way and real property in an amount proportional to its allocated share as reflected on **Attachment C**.

7. Utilities

If the required right of way encroaches on existing utilities and the Project requires their adjustment, removal, or relocation, the Developer shall be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments. The Developer shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including Transportation Code, §203.092 (Reimbursement for Relocation of Utility Facilities), 43 TAC §15.55 (Construction Cost Participation); 43 TAC §21.21 (State Participation in Relocation, Adjustment, and/or Removal of Utilities); and 43 TAC §21.31 et seq. (Utility Accommodation). The Developer shall be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities or specified in separate agreements with the Austin District. Before construction on a segment of the Project is begun, a utility certification must be made available to the Department stating the status of all utility adjustments and the expected date when all utilities will be adjusted.

8. Engineering Services

The Developer has responsibility for the performance of architectural and engineering services, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed in design of the Project and carried out during construction of the Project. The engineering plans shall be developed in accordance with the latest version of the Department's manuals. The Department's executive director may exercise discretion in authorizing alternative criteria or granting exceptions to this requirement on a case-by-case basis if a particular criterion could not reasonably be met because of physical, environmental, or other relevant factors and if the proposed design is a prudent engineering solution. The Project shall comply with all federal requirements including those cited in 23 CFR Part 172 and those relating to

participation by disadvantaged business enterprises, the Americans with Disabilities Act, and environmental matters. Professional services shall be procured in compliance with Government Code Chapter 2254, Subchapter A. Unless an exception is granted by the Department, access to the facility shall be in compliance with the Department's access management policy.

9. Construction Responsibilities

- a. The Developer shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary after the award of the construction contract. The bidding process must be competitive and must comply with all applicable federal and state laws. The Project must be authorized by the Department before it is advertised for letting. The Project must also be authorized by FHWA before it is advertised for letting.
- b. The Developer has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed, of assessing potential environmental effects of contract revisions, and of obtaining environmental permits, issues, coordination, mitigation, and commitments that may be required by contract revisions. The Developer shall hire a third party firm, approved by TxDOT Austin District, to provide independent QA/QC during construction. Contract revisions shall comply with the latest version of all national and state administrative criteria and manuals. No contract revision may be made without the prior written approval of the Department's executive director if it would affect prior environmental approvals, significantly revise the scope of the Project or the geometric design, or change the cost to the Department. Procedures governing approval are contained in Attachment D.
- c. When the Project is complete, the Developer shall issue and sign a "Notification of Completion" acknowledging the Project's construction completion. Within six months after the Project is complete, the Developer shall file with the Department a set of asbuilt plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications.
- d. The parties to this agreement shall comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form FHWA-1273 in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.
- e. The Department may audit the construction process at any time to ensure that the Developer is complying with this agreement and that the Developer is providing adequate inspection of construction. The Department may conduct its own inspection of construction at any time. Any deficiencies noted shall be reported to the Developer and shall be corrected by the Developer.

10. Maintenance

The Department shall be responsible for maintenance of the Project after completion of the work.

11. Repayment

- a. This paragraph applies until the Project as a whole is substantially complete and all highway improvements are open to the public. The Department shall reimburse the Developer by paying a semi- annual amount equal to \$0.10 for each vehicle-mile traveled on the highway improvements that were substantially complete and open to the public at any time during the previous year. The total cumulative reimbursement by the Department shall not exceed 88% of the Developer Participation shown in Attachment C for the highways that are substantially complete and are open to the public. For each highway improvement that is opened after the first highway improvement, the number of vehicle-miles traveled on the Project during the previous year shall include vehicle-miles traveled on the newly opened highway improvement beginning on the date that the newly opened highway improvement is substantially complete and opened to the public.
- b. This paragraph applies after the Project as a whole is substantially complete and all highway improvements are open to the public, The Department shall reimburse the Developer by paying a semi- annual amount equal to \$.10 for each vehicle-mile traveled on the Project during the previous year. The annual reimbursement will be no less than \$7,597,100 and no more than \$15,194,200. Under no circumstances will the total payments under this article during the course of this agreement exceed \$ 151,942,000 unless this agreement is amended.
- c. The number of vehicle-miles traveled on the Project during a year will be based on the Department's traffic estimates, which shall be derived from a mutually agreed upon counting method and performed in good faith and shall be conclusive and not subject to litigation in any forum.
- d. The semi-annual payment shall be made within 60 days after the first six months of the date on which the first highway improvement is substantially complete and opened to the public. Subsequent semi-annual payments shall be made on or before each succeeding six month anniversary of the first semi-annual payment.

12. Force Majeure

If there is substantial damage to the Project from Acts of God, comprising earthquakes, tidal waves, tornados, hurricanes, and other cataclysmic phenomena of nature, the parties may renegotiate the terms of this agreement to yield a fair allocation of costs.

13. Mutual Cooperation

The Department and the Developer shall use all reasonable efforts to meet all deadlines specified in this agreement. The Department and the Developer shall use their best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

14. Precedence of Provisions

Except where a particular provision contains specific instructions with regard to the order of precedence of terms in this agreement, any conflict among the terms of this agreement shall be resolved by giving precedence to terms in the following order:

1. the main body of the agreement;

- 2. Attachment C;
- 3. Attachment D;
- 4. Attachment B:
- 5. Attachment A.

15. Termination

This agreement terminates automatically when the Department has reimbursed the Developer fully in accordance with article 11. In addition,

- 1. the agreement may be terminated in writing with the mutual consent of the parties; or
- 2. the agreement may be terminated by either party because of a material breach by the other party.

16. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

17. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Developer:	Department:

County Judge Williamson County 301 S.E. Inner Loop, Ste. 109 Georgetown, Texas 78626 Texas Department of Transportation Attn: Chief Financial Officer 125 East 11th Street Austin TX 78701-2483

All notices shall be deemed given on the date delivered in person or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party. A copy of each notice shall be provided to the Developer's Program Manager, Austin District Engineer and Georgetown Area Engineer.

18. Assignment and Subcontracts

An assignment of this agreement may not be executed by the Developer without prior written authorization by the Department. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. No subcontract will relieve the Developer of its responsibility under this contract. Neither party shall assign any interest in this agreement.

19. Ownership of Property

After completion or termination of this agreement, all documents prepared by the Department shall remain the property of the Department. All data prepared under this agreement shall be made available to the Department without restriction or limitation on further use. All documents produced or approved or otherwise created by the Developer shall be transmitted to the Department in the form of photocopy reproduction as reasonably required by the Department. The originals shall remain the property of the Developer. The Developer shall grant the Department an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this contract.

20. Developer Resources

All employees of the Developer shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Developer certifies that it currently has adequate qualified personnel in its employment to perform the work required under this contract or will be able to obtain adequate qualified personnel from sources other than the Department. On receipt of written notice from the Department detailing supporting factors and evidence, the Developer shall remove from the Project any employee of the Developer who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Developer shall furnish all equipment, materials, supplies, and other resources required to perform the work.

21. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

22. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Developer shall furnish the Department with satisfactory proof of this compliance. The Developer shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

23. Legal Construction

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

24. Insurance

To the extent that this agreement authorizes the Developer or its contractor to perform any work on Department right of way, before beginning work the entity performing the work shall provide the Department with a fully executed copy of the Department's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types

specified on the Certificate of Insurance for all persons and entities working on Department right of way. This coverage shall be maintained until all work on the Department right of way is complete. If coverage is not maintained, all work on Department right of way shall cease immediately, and the Department may recover damages and all costs of completing the work.

25. Hold Harmless

To the extent permitted by law, each party shall save harmless the other party, its officers, and its employees from all claims and liability due to the materials or activities of the first party, its agents, or its employees, to the extent that those activities are performed under this contract and are caused by or result from error, omission, or negligent act of the first party or of any person employed by the first party. To the extent permitted by law, each party shall also save harmless the other party from any and all expense, including but not limited to attorney fees that may be incurred by the that party in litigation or otherwise resisting the claim or liabilities that may be imposed on the that party as a result of the materials or activities of the first party, its agents, or its employees.

26. Sole Agreement

This agreement constitutes the only agreement between the parties and supersedes any prior understandings or written or oral agreements concerning the agreement's subject matter.

27. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

28. Gratuities

Any person who is doing business with or who reasonably speaking may do business with the Department under this contract may not make any offer of benefits, gifts, or favors to employees of the Department. The only exceptions allowed are ordinary business meals and items that have received the advanced written approval of the Department's executive director.

29. Conflict of Interest

The Developer shall not assign an employee to the Project if the employee:

- a. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the Department relating to the Project;
- b. has a direct or indirect financial interest in the outcome of the Project;
- has performed services regarding the subject matter of the Project for an entity that
 has a direct or indirect financial interest in the outcome of the Project or that has or
 may have a contract with the Department; or
- d. is a current part-time or full-time employee of the Department.

30. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

31. Cost Principles

The parties shall comply with the cost principles established in OMB Circular A-87.

32. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

33. Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this agreement and shall make those materials available to the Department, the Developer, FHWA, and the U.S. Office of the Inspector General for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending claims are resolved. Additionally, the Department, the Developer, and the FHWA shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

34. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

35. Civil Rights Compliance

The Developer shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

36. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26. The Developer's program is subject to approval by the Department.

37. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by

the Department, to furnish a copy of the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

38. Lobbying Certification

In executing this agreement, each signatory certifies that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

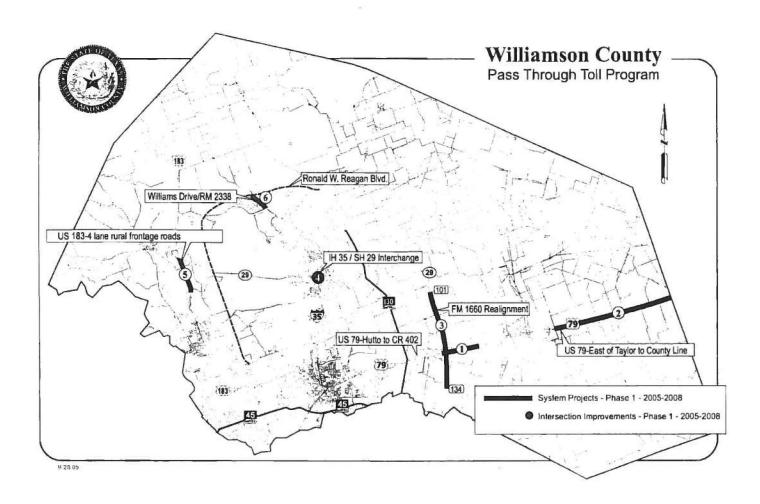
By executing this agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this contract.

Texas Department of Transportation	Williamson County
Louis M Bass	John C. Queller
James M. Bass	John Doerfler
Chief Financial Officer	County Judge
2-22-2006	1-24-06
Date	Date

ATTACHMENT A



ATTACHMENT B

PROJECT DESCRIPTION AND SCOPE OF WORK

THE CONTRACTOR OF THE CONTRACT

US 79 (Hutto to CR 402)

US 79 is a major highway connecting the cities of Round Rock and Taylor with the IH 35 corridor. It is a four-lane undivided roadway with an intermittent center turn lane at some intersections. This project will improve the 4.3 mile section from just east of the Hutto city limits to CR 402. Improvements will consist of reconstruction of the roadway to a four-lane divided section with median openings and left-turn bays at the significant intersections. Existing (2003) annual average daily traffic count for this section of US 79 east of Hutto is 16,200.

The 90% Environmental Assessment has been submitted and is pending approval. The Schematic is complete and has been submitted to TxDOT for review. Some right-of-way has been acquired. PS&E has not been started.

The Cost of this project is \$16,000,000, which includes an estimated \$2,500,000 of right-of-way and utility costs.

FM 1660 Realignment (CR 134 to CR 101)

FM 1660 is a two-lane State facility running east of the cities of Round Rock and Georgetown through the City of Hutto. This project would relocate approximately 7.5 miles of the roadway from the CR 134 intersection at the south end to CR 101 intersection at the north. The purpose of the project is to divert the significant traffic volumes (including substantial truck traffic) out of downtown Hutto. Two lanes will be built in the interim – ultimately, a four-lane divided section is planned. Existing (2003) annual average daily traffic count for this section of FM 1660 north of Hutto is 3,400.

The Environmental Assessment has been submitted. The Schematic has been submitted to TxDOT for approval. No right-of-way has been acquired. PS&E has not been started.

The Cost of this project is \$17,000,000, which includes an estimated \$2,000,000 of right-of-way and utility costs.

SH 29 / IH 35 Interchange

This project would improve the operation of the existing interchange through the construction of northbound and southbound U-turn lanes for the IH 35 frontage roads, as well as additional improvements to the intersection approaches. No widening of the existing bridge is anticipated. The FY 2003 average daily traffic count for this section of SH 29 is 13,900.

The Environmental Assessment process is planned to be completed by early 2007. Schematic development and PS&E should be complete by late 2007. No right-of-way has been acquired.

The Cost of this project is \$4,100,000, with no additional right-of-way required.

US 79 (East of Taylor to County Line)

US 79 is a four-lane undivided major arterial providing a link between eastern Williamson County and the cities of Taylor, Hutto, and Round Rock. US 79 is part of the State's Trunk system. This project would improve the roadway to a four-lane divided section to improve safety for turning movements to intersecting roadways and businesses. The FY 2003 average daily traffic count for this section of US 79 is 7,200.

The Environmental Impact Statement process, including schematic development, should be completed by mid 2006. Most right-of-way has been acquired along this segment of US 79. PS&E is planned to be completed by mid 2008.

The Cost of this project is \$40,000,000, which includes an estimated \$2,300,000 of right-of-way and utility costs.

US 183 (San Gabriel River to SH 29)

US 183 is a four-lane undivided major arterial that will carry an ever-increasing amount of traffic as development continues north of Leander and other sections of northwest Williamson County. This project, starting at the northern terminus of the 183-A tollway would improve this segment of roadway by constructing a 4-lane rural frontage system on an average of 400 feet of right of way. The main lanes could be built as an extension of the CTRMA's 183-A toll road. The FY 2003 average daily traffic count is 13,100.

The Environmental Assessment process, including schematic development, should be completed by July, 2007. No right-of-way has been acquired at this point. PS&E is planned to be completed by July, 2008.

The Cost of this project is \$25,500,000, which includes an estimated \$5,500,000 of right-of-way and utility costs.

FM 2338 (FM 3405 to Ronald Reagan Blvd.)

FM 2338 is a rural two lane state facility running west from IH 35 in Georgetown. TxDOT has a funded project to improve FM 2338 to FM 3405. This project would continue the States 5-lane rural section from FM 3405 to proposed Ronald Reagan Blvd. Ronald Reagan Blvd. is a major 4-lane north-south arterial being constructed (FM 1431 to FM 2243 open to traffic; FM 2243 to FM 3405 under construction; and FM 3405 to FM 2338 start construction Summer 2006) located in Western Williamson County halfway between US 183 and IH 35.

The cost of the project is \$6,000,000, which includes an estimated \$2,000,000 in right of way and utility costs. The FY 2003 average daily traffic count is 7,400.

Williamson County Multi-Corridor Transportation Program Phase I (2005 \$ in 1, 000's)

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			Rigi	State	County			Eligible for Pass		
Projects	(2005 - 2008)	Construction	Total	Participation	Participation	PSE/CEI	Debt Service	Through Toll	General Project Status	CSJ
US 79	East city limit Hutto to CR 402 4-lane divided rural	\$16,000	\$2,500	\$2,250	\$250	\$3 725	\$ 9,896		Design contract being negotiated-ENV clearance in process to be cleared early 2006 ROW maps in progress	0204-02-027
US 79	East of Taylor to Milam County Line 4-lane divided rural	\$40,000	\$2,300	\$2,070	\$230	000,82	\$21,539	\$68,539	Schematic 90% complete ENV in progress; to be cleared in 2006	0204-04-040
FM 1660	CR 134 to CR 101 2-lane rural	\$17,000	\$2,000	\$0	\$2,000	\$3,700	\$10,478	\$30,278	Public mtg has been held Project to beENV deared in early 2006-Design Contract being negotiated	1566-01-009
IH 35/SH 2	29 NE/SB turnaround structure	\$4,100	\$250	\$0	\$250	\$980	\$2,910	\$8,240	Schematic in development	0015-08-122
US 183	San Gabriel River to SH 29 4-lane rural frontage roads and 3 turn lanes	\$13,000	\$ 5,500	\$4,500	\$1,000	\$3 <i>5</i> 50	\$9,3 13	\$26,863	Preliminary schematic complete-Design Contract being negotiated	0273-04-026 0273-04-026
FM 2338	FM 3405 to Reagan Blvd. 5-lane rural	\$5,000		\$0	\$2,000		\$4 075		No activity to date	2211-01-023
	Total	\$96,100	\$14,550	\$8,820	\$5,730	\$21,380	\$58,211	\$174,041		

TOTAL PHASE I - Williamson County

\$174,041

ATTACHMENT D

Project Implementation

Overview

This Attachment defines the roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project.

1. Environmental Studies and Mitigation

- 1.1. The Developer shall complete all environmental studies and documents required to secure environmental approval, including each of the following items.
 - **1.1.1.** Preparation and completion of environmental studies, including obtaining right of entry to perform such studies. All environmental studies will be performed by environmental specialists who meet the requirements to perform those studies.
 - 1.1.2. Submission of appropriate documentation (categorical exclusion, environmental assessment, and environmental impact statement, including reevaluation, and supplemental documentation) for Department review and approval. Department review is detailed in section 1.2 below.
 - **1.1.3.** Preparation of any document revisions.
 - **1.1.4.** Submission to the Department of copies of the environmental studies and documentation adequate for distribution.
 - **1.1.5.** Preparation of legal and public notices in accordance with 43 TAC §2.43 for Department review and use.
 - 1.1.6. Arrangements for appropriate public involvement, including court reporters and accommodations for persons with special communication or physical needs related to the public hearing, if requested. The Department will serve as the Hearing Official at any public hearing with the assistance of the Developer.
 - **1.1.7.** Preparation of public meeting and hearing materials.
 - **1.1.8.** Preparation of any necessary responses to comments.
 - **1.1.9.** Preparation of the public meeting and public hearing summary and analysis, and the comment and response reports.
 - **1.1.10.** Submission to the Department of a verbatim transcript of any public hearing and the original certification of the public involvement process as described in 43 TAC § 2.43.
 - 1.1.11. Preparation of required US Army Corps of Engineers permit applications and associated drawings for impacts to jurisdictional waters, including mitigation requirements. The permits will be issued in the Developer's name with the Developer being responsible wholly for any and all mitigation that would be required.
 - **1.1.12.** The Developer is responsible for all Project-related environmental permits, issues, and commitments, including any mitigation or remediation that may be required under any law or regulation.
 - **1.1.13.** Submission to the department of documentation showing that all environmental permits, issues, and commitments have been or will be

completed, including copies of permits or other approvals required prior to construction in accordance with 23 CFR 771.109.

- **1.2.** As set forth in Exhibit 1, Roles and Responsibilities, the Department will conduct concurrent environmental reviews throughout the clearance process in an attempt to expedite the environmental approval of the Project.
 - 1.2.1. Except as otherwise required by law or by agreement between the Department and a state or federal agency, the Developer is responsible for coordinating with local governmental entities and applicable agencies throughout the Project planning process to assure compliance with applicable laws. The Developer and Department will make every reasonable effort to resolve disagreements with local governments and with state or federal agencies as they relate to environmental approval of the Project.
 - **1.2.2.** The Developer will coordinate the submission of documents for concurrent Agency review with the Department.
 - 1.2.3. The Department is responsible for coordinating all review activities listed in the expedited review schedule defined in Exhibit 2, General Review Schedule. The Department is responsible for working with the lead agency, the cooperating agencies and any affected entities to ensure a timely and thorough coordination process through a specified staff working group. The Developer will be an integral participant throughout the concurrent review process to rapidly address comments and concerns necessary to secure clearance within the expedited review schedule.

2. Right-of-Way Acquisition

- **2.1.** Except as provided in article 6, the Developer, independently of the Department, is responsible for the acquisition and provision of any right-of-way or real property needed for the Project.
- 2.2. The Developer will establish and maintain a project tracking system that is acceptable to the Department and that shows the right of way surveying and mapping, appraisal, acquisition, and relocation status of each parcel.
- 2.3. The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required conveyance documents and other right-of-way related deliverables required by the Department for their permanent files.
 - 2.3.1. Within ten (10) days after commencement of work on each individual highway improvement, the Developer will confirm in writing all agreed-upon terms relating to the acquisition of right-of-way to the Department and all agreements will remain in effect until appropriate title to the New Right of Way is conveyed to the State of Texas.
 - 2.3.2. The Developer will provide the Department with a certification that it has received the Department's Right of Way Manual Collection and that it will comply with the procedures in that collection.
 - **2.3.3.** For each parcel to be acquired, the Developer will use checklists approved by the Department.

- **2.4.** The Developer will prepare right-of-way maps, field notes, parcel plats, and other data as needed to describe the right-of-way and access rights necessary for the Project.
 - **2.4.1.** The field notes and parcel plats will be signed and sealed by a Registered Professional Land Surveyor currently licensed by the "Texas Board of Professional Land Surveying."
 - **2.4.2.** Copies of this data for a representative segment of right of way will be delivered to the Department before beginning the standard process for acquisition of right of way for each individual highway improvement.
- 2.5. The Developer will acquire in the name of Williamson County fee simple title and any required drainage channel easements free and clear of all liens and encumbrances for all land to be used as right-of-way for the Project.
 - **2.5.1.** Title to the New Right of Way will exclude oil, gas, and sulfur from the deed without any right in the owners to ingress or egress to or from the surface of the land for the purpose of exploring, developing, drilling, or mining.
- 2.6. The Developer is responsible for the negotiation of access points at the time of acquisition based on Department's Roadway Design Manual, the Department's Access Management Manual, and the preferred engineering access points shown on the schematic for the highway improvement.
 - **2.6.1.** The access points for each highway improvement will be incorporated into the deed when the property is acquired and will be transferred to the Department when that highway improvement is completed.
- 2.7. Subject to the force majeure provisions of this Agreement, the Developer will ensure that all right-of-way used in constructing the Project will be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Developer. The Developer shall provide written documentation from appropriate regulatory agencies that all known hazardous materials and contaminants in the right of way have been adequately mitigated or that the Developer otherwise meets the requirements for regulatory closure.
- 2.8. The Developer will, upon completion of individual highway improvements, convey all ownership of the New Right of Way to the State of Texas through the Department. The conveyance shall be in a form acceptable to the Department and shall be of fee simple title. Developer shall also convey all applicable conveyance instruments to the Department for its permanent files.
 - **2.8.1.** The Developer will also provide the Department with title insurance for the New Right of Way in the name of the State of Texas as the insured owner.
 - **2.8.2.** The Developer will provide tracings and electronic files of right-of-way maps to the Department.
 - **2.8.3.** The Developer will also provide the Department a final map showing the final location of all utility lines that were adjusted or remained in place and joint use numbers assigned to those utilities.

3. Utilities

- 3.1. The Developer is responsible for determining the scope of utility work if the required right of way encroaches on existing utilities and the Project requires their adjustment, removal, or relocation. Utilities will not be adjusted, removed, or relocated before environmental approval is secured.
- **3.2.** The Developer is responsible for notifying the appropriate utility company to schedule adjustments.
- **3.3.** The Department will grant the Developer or its authorized representative site access required to execute the work and will issue right of entry for the performance of utility relocation.
- 3.4. The Developer, unless specified in separate agreements with the Austin District, is responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities.

4. Engineering Services

- **4.1.** The Developer will remain the single point of contact for engineering and design issues. All correspondence and instruction to the design consultants will be the sole responsibility of the Developer.
- 4.2. At the commencement of an individual highway improvement, the Developer will coordinate a Design Concept Conference with the Department to establish the performance parameters and design requirements for the highway improvement, including the Pavement Design, Hydraulic Design, Design Concept Conference Forms and Typical Sections, which will remain in place throughout the implementation of the highway improvement.
- 4.3. All plans, specifications, and estimates developed by or on behalf of the Developer shall conform to the latest version of the Department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions. The Department's executive director may exercise discretion in authorizing an alternative specification or alternative design criteria. The construction plans furnished to the Department shall be reproducible tracings on mylar or equivalent. Geopack Design files as defined by the Austin District shall be furnished to the Department within 30 days of project completion.
- **4.4.** If the Department determines that the complete plans, specifications, and estimates are unacceptable, the Developer shall correct the design documents to the Department's satisfaction. Should additional specifications or data be required by the Department, the Developer shall redesign the plans and specifications to the Department's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Developer.
- 4.5. If exceptions to the Department's design criteria are required as specified in the Department Roadway Design Manual, a request for exceptions shall follow the procedure set forth in that manual.
 - **4.5.1.** If it becomes necessary to change a design after it has been approved by the Department, and if that change does not require the adoption of alternative design criteria or an exception to the Department's design

- criteria, the Developer will coordinate with the Department and FHWA for approval of the change.
- **4.5.2.** The Department shall have no more than 10 business days after receiving a proposed design change to either (1) to approve the design change as proposed by the Developer or (2) to respond with a Department-recommended alternative to the design change.
- **4.5.3.** If the Department responds with an alternative to the design change, the Developer and the Department shall work diligently to develop a mutually agreeable design solution.
- **4.5.4.** The Department is responsible for obtaining any necessary approval from FHWA.

4.6. Reviews

- **4.6.1.** The Department will transmit the pavement design to the Developer at the project's design concept conference. After the pavement design has been issued by the Department, it may not be changed by either party without the written consent of the other.
- **4.6.2.** When design is 30% complete, the Developer will coordinate the submission of the following design information for a joint review session between the Developer and the Department to allow comments and concerns to be addressed by the Developer within the expedited review schedule defined in Exhibit 2, General Review Schedule.
- **4.6.3.** The following will be reviewed as set forth in Exhibit 1, Roles and Responsibilities.
 - 1) Preliminary cross sections showing existing utility lines, R.O.W.
 - 2) Plan and profile sheet showing existing and proposed:
 - a) R.O.W. lines
 - b) Roadway alignments and profiles
 - c) Intersecting streets
 - d) Curb and lane lines
 - e) Existing Utilities
 - 3) Existing and proposed typical sections including pavement section
 - 4) Preliminary title and index sheets.
 - 5) Preliminary drainage area map, discharge relationships and drainage calculations.
 - 6) Storm drainage master plan.
 - 7) Preliminary culvert layouts.
 - 8) Preliminary bridge and bridge classification culvert layouts, including test hole information.
 - 9) Preliminary retaining wall layout, including test hole information.
 - 10) Sequence of work outline for traffic control.
 - 11) Preliminary traffic control typical sections and layouts.
 - 12) Preliminary intersection layouts.
 - 13)Preliminary utility layouts identify potential conflicts and exchange of information with existing utilities.
 - 14) Update estimates and prepare preliminary roadway and drainage quantity summary sheets.
 - 15) Updated design contract schedule.

- **4.6.4.** When the Project design is final, the Developer will coordinate the submission of the following information to the Department for concurrent review to allow comments and concerns to be addressed by the Developer to secure approval of the Department and FHWA within the expedited review schedule defined in Exhibit 2, General Review Schedule.
 - 1) Seven (7) copies of final plans, specifications, and engineer's estimate.
 - 2) Revisions to the preliminary design submittal.
 - 3) Proposal to award construction contract in compliance with applicable state and federal requirements.
 - 4) Proposed contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals.
 - 5) Documentation of all environmental permits, issues, and commitments that will be addressed in construction.
- **4.6.5.** Approval by the Department of this final design submittal will constitute authorization for the Developer to advertise for construction bids.
- **4.6.6.** For any individual highway improvement with a construction cost over \$25 million, the Developer shall conduct a value engineering workshop.

5. Construction Responsibilities

- The Developer will retain a third party firm, approved by the Austin District, to supervise and inspect all work performed during construction and provide engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. The Developer shall prepare all manuals and agreements required for Department and FHWA oversight. Construction material testing shall be in conformance with Department Policy. The resolution to all noncomplying tests and/or failing tests shall be determined by the Austin District. The Developer's lane closure policies must be approved by the Austin District prior to the letting of any project. Lane closure policies may be adjusted only with the approval of the Austin District. The Department will participate in the development of and be able to include items on the final "punch list" for each The project's "Notice of Completion" will not be issued by the Developer and accepted by the Department until all "punch list" items have been resolved to the satisfaction of the Department. Upon the Developer awarding a construction contract, the Developer is responsible for all maintenance within the limits of the project including but not limited to mowing, litter pickup, sweeping, dust control, ice control, and traffic signal maintenance.
 - **5.1.1.** All correspondence and instruction to the contractor performing the work will be the sole responsibility of the Developer.
 - 5.1.2. All work will be performed, unless otherwise specifically stated in the contract documents for the Project, in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges or special specifications or provisions approved by the Department.

- **5.2.** The Department will allow the Developer or its authorized representative to have access to the site to perform any activities required to execute the work and issue a right of entry for the performance of all construction activity.
- 5.3. The Developer will negotiate and approve all Change Orders and contract revisions that the Developer finds necessary or convenient to accomplish the construction activities for the Project. For Change Orders and contract revisions that affect prior environmental approvals or result in non-conformity with the specifications and standards agreed upon for the Project, the Developer must assess any potential environmental effects and any additional or revised environmental permits, issues, coordination, mitigation, and commitments required as a result of the contract revisions.
 - **5.3.1.** The Developer will document any such changes, including a proposed course of action.
 - **5.3.2.** The Developer will notify the Department of the need for such changes and submit the appropriate documentation.
 - **5.3.3.** The Department shall have no more than 10 business days after the Developer's submission either to approve the changes as submitted by the Developer or to respond with the Department's proposed revisions.
 - **5.3.4.** If the Department responds with revisions, the Developer and the Department will work diligently and in good faith to develop mutually agreeable changes that shall then be implemented by the Developer.
 - **5.3.5.** The Developer shall be responsible for obtaining any required approvals from federal, state, or local governmental authorities, with the exception of the Department and FHWA, and except as otherwise specified in this agreement.
 - **5.3.6.** To the extent that a Change Order requires the adoption of alternative design criteria, an exception to the Department's design criteria, or a change in the approved design, the design must be approved as set forth in Sections 4.3, 4.4, or 4.5, as applicable.
- 5.4. The Developer will comply with applicable Federal requirements throughout the procurement and construction process in order to maintain the Department's eligibility for Federal reimbursement for Project costs. The Developer's compliance with requirements necessary to maintain eligibility for federal reimbursement is a condition precedent to performance by the Department.
- **5.5.** The Developer shall include in their contract documents the requirement that all warranties shall be transferred to the Department upon "Notification of Completion" of the projects.
- **5.6.** Within six (6) months of issuance of the "Notification of Completion," the following documentation will be provided to the Department:
 - 1) Record Drawings
 - 2) Engineer Certification of Project Completion
 - 3) Right of Way Parcel Information (Exhibits, Descriptions, Right of Way Maps, Field Notes, etc.)

6. General

- 6.1. Unless otherwise specified in this agreement, all actions required of the Developer shall be taken by the Developer's Program Manager, who shall be an individual designated by name by the Williamson County Commissioners Court. The Developer's Program Manager may delegate responsibility to another person in a writing provided to the Department.
- 6.2. Unless otherwise specified in this agreement, all actions required of the Department shall be taken by the Department's District Engineer for the Austin District. The District Engineer may delegate responsibility to another person in a writing provided to the Developer. Whenever this agreement requires an action to be taken by the Department's executive director, that responsibility may be delegated to another Department employee who is not below the level of district engineer. On request, the Department will provide the Developer with a copy of the executive director's delegation of authority.
- **6.3.** The Developer and the Department will attempt to agree on the procedures and policies to be used by the Department in the auditing of Project activities.
- **6.4.** The Developer and the Department will attempt to agree on a transition plan at the time of or before completion of the Project.
- **6.5.** The Developer will schedule regular meetings with the Department to maintain the communication necessary to successfully implement the Project.
- 6.6. The Developer will prepare program organizational and management documents, including Program Management Plan and Quality Control/Quality Assurance Plan for all work products. The Developer will provide these documents to the Department for all contracted firms participating in the Project.
- **6.7.** The Developer will maintain all documentation relative to implementation and completion of the Project, including without limitation documentation relating to environmental issues, acquisition of right of way, preliminary and final design, and bidding, award, and construction of the Project.

Exhibit 1: Roles and Responsibilities for Each Entity

	Responsible Party
Preliminary Engineering	
Retain Consultant	Developer
Develop Preliminary Design	Developer
Develop Preliminary Cost Estimate	Developer
Define Right of Way Requirements	Developer
TxDOT Review and Approval of Preliminary	Developer, Department
Engineering Report	
Environmental Review	
Retain Consultant	Developer
Draft Environmental Documents	Developer
Schedule & Conduct Public Meetings	Developer, Department
Environmental Document Review	Developer, Department
Concurrent Review of Environmental	Developer, Department, FHWA

Documentation	
Documentation	
Posource Agency Poview	Developer Deportment FUMA
Resource Agency Review	Developer, Department, FHWA
Notification and Documentation of Comments	Developer
Notification and Documentation of Comments	Developer
Publish and Hold Public Hearings	Developer, Department
T dollar and riolar ablic ricallings	Developer, Department
Analyze and Document Public Hearings	Developer
7 dialy25 and 2556mont ability learnings	Develope:
Final Review	Developer, Department, FHWA
Document Approval	Department, FHWA
Environmental Permits, Issues, and	Developer
Commitments	
	R.
Permitting	
Develop Required Permit Applications	Developer
Submit Required Permit Applications	Developer, Department

Right of Way Acquisition	
Develop Right of Way Budget	Developer, Department

Retain Surveyor	Developer
Develop Right of Way Map and Parcel	Developer, Department
Sketches	
Retain Appraisers	Developer
Work with Owners on Donations, Access, Etc.	Developer
Purchase Parcels at Developer's Risk	Developer
Purchase Parcels After NEPA Process	Developer, Department
Eminent Domain Proceedings	Developer
Utility Identification and Relocation	Developer, Department
Audit of Right of Way Process	Department

	Responsible Party
Design	
Retain Designer, Geotech, Surveyor, and	Developer
other professional service providers	
Develop 30% Submittal Package	Developer
30% Submittal for Department Review	Developer
Final Submittal for Department Review	Developer
Approval of Design	Department, FHWA
	-
Bid for Construction	
Preparation of Bid Documents	Developer
Advertisement for Bids	Developer
Bid Opening, Evaluation, and Award	Developer
Construction	

Coordination with Utilities for Relocation	Developer
Issuance of Construction Notice To Proceed	Developer
Administration of Construction Contract	Developer
Inspection of Construction	Developer, Third Party Inspector
Issuance of Notification of Completion	Developer

Exhibit 2: General Review Schedule Specific timelines are incorporated into the timeline for each highway improvement.

1			Review
		Time	
1	Preliminary/Schematic	2 weeks	
		District Environmental Review	2 weeks
		Document Revisions	1 week
		Environmental Review	2 weeks
2	Environmental	Document Revisions	1 week
	Review	Resource Agency Review	45 days
			minimum
		FHWA Review	30 days
		Document Revisions	1 week
		Release to Public Hearing	6 weeks
	4	Advertising for public hearing	
		Conducting Public Hearing	

		Comment Period	10 days
		Public Hearing Summary and Analysis	3 weeks
		Preparation	
		Department Review of Summary and	3 weeks
		Analysis	^-
	•	FHWA Review of Summary and Analysis	30 days
		30% Completion	2 weeks
3	Review of Plans,	100% Completion	2 weeks
	Specifications, and	Federal Approval of Letter of Authority	1 week
	Estimates		