



AGREEMENT FOR CONSTRUCTION MATERIALS TESTING SERVICES

PROJECT: River Ranch County Park Completion ("Project")

**CONSTRUCTION
MATERIALS TEST
ENGINEER:**

Terracon Consultants, Inc. ("Test Engineer")
Harrison J. Schneider, PE
800 Paloma Drive, Suite 150
Round Rock, Texas 78665

**COUNTY'S DESIGNATED
REPRESENTATIVE:**

Williamson County Facilities Department
Attn: Director of Facilities
3101 SE Inner Loop
Georgetown, Texas 78626

THIS AGREEMENT FOR CONSTRUCTION - MATERIALS TESTING SERVICES ("Agreement") is made and entered into effective as of the latest date of the signatories indicated at the conclusion of this document (the "Effective Date"), by and between **Williamson County, Texas** a political subdivision of the State of Texas ("County") and Test Engineer.

RECITALS

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled "Professional Services Procurement Act" provides for the procurement by counties of services of professional engineers; and

WHEREAS, County intends to repair and reconstruct roads and drainage systems at River Ranch County Park; and

WHEREAS, County desires that Test Engineer perform certain professional services in connection with the Project; and

WHEREAS, Test Engineer represents that it is qualified and desires to perform such services;

NOW, THEREFORE, County and Test Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

ARTICLE 1 SCOPE OF AGREEMENT

Test Engineer agrees to perform professional services in connection with the Project as stated herein, and for having rendered such services, County agrees to pay to Test Engineer compensation as stated in the articles to follow.

ARTICLE 2 CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS

2.1 Contract Documents.

Contract Documents consist of this Agreement, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Agreement), and all fully executed Supplemental Agreements which are subsequently issued. These form the entire Agreement, and all are as fully a part of this Agreement as if attached to this Agreement or repeated herein.

2.2 Existing Information.

County shall provide Test Engineer with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular Project at no cost to Test Engineer; however, any and all such information shall remain the property of County and shall be returned, if County so instructs Test Engineer.

2.3 Project Documents.

In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

2.3.1

National Environmental Policy Act (NEPA)

2.3.2

U.S. Army Corps Regulations

ARTICLE 3 NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST PROHIBITED

3.1 Non-collusion.

Test Engineer warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for Test Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or subconsultant any fee, commission,

percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County reserves and shall have the right to annul this Agreement without liability or, in its discretion and at its sole election, to deduct from the Agreement price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3.2 Debarment Certification.

Test Engineer must sign the Debarment Certification enclosed herewith as Exhibit E.

3.3 Financial Interest Prohibited.

Test Engineer covenants and represents that Test Engineer, its officers, employees, agents, consultants, and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials, or equipment that will be recommended or required for the construction of the Project.

ARTICLE 4 CHARACTER AND SCOPE OF SERVICES

4.1

In consideration of the compensation herein provided, Test Engineer shall perform professional materials testing services for the Project, which are acceptable to County, based on standard geotechnical engineering and construction materials testing practices and the scope of work described on the Exhibits attached to this Agreement.

ARTICLE 5 TIME FOR PERFORMANCE

5.1 Commencement.

Test Engineer shall not commence work until Test Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing to proceed, as evidenced by a Notice to Proceed.

5.2 Duration.

Test Engineer agrees to complete the Basic Services within the time period set forth in Exhibit C. The time limits set out therein may, for good cause, be extended, in writing, by County as the Project proceeds.

ARTICLE 6 COMPENSATION AND EXPENSES

6.1 Basic Fee.

For and in consideration of the Basic Services rendered by Test Engineer, County shall pay to Test Engineer up to **Twenty-Eight Thousand Eight Hundred Nine Dollars (\$28,809)** hereinafter called the "Basic Fee".

The Basic Fee is based upon all estimated labor costs required in the performance of all items and phases of the Basic Services set forth in Exhibit A. Compensation for Basic Services will be paid by County by monthly invoices of percentage completion of fees by phase of the Basic Fee as set forth in Exhibit B – Fee Schedule. County will only be obligated to pay Test Engineer for the performance of items and phases of the Basic Services actually rendered and incurred, which may be less than the above stated Basic Fee.

6.2 Expenses.

Test Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement in accordance with the Williamson County Vendor Reimbursement Policy set forth under Exhibit D. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice and **must strictly comply with the Williamson County Vendor Reimbursement Policy**. The copies of the provider's invoice must evidence the actual costs billed to Test Engineer without markup. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and must not exceed **Five Hundred Dollars (\$ 500)**.

ARTICLE 7 ADDITIONAL SERVICES AND CHARGES

For the performance of services not specifically described as Basic Services under **Article 4** above (sometimes referred to herein as "Additional Services"), County shall pay and Test Engineer shall receive, under a negotiated, written Supplemental Agreement, Additional Services compensation based upon invoices of percentage completion.

Test Engineer shall not, however, be compensated for work made necessary by Test Engineer's negligent errors or omissions. In the event of any dispute over the classification of Test Engineer's services as Basic or Additional Services under this Agreement, the decision of County shall be final and binding on Test Engineer.

It is expressly understood and agreed that Test Engineer shall not furnish any Additional Services without the prior written authorization of County by a negotiated Supplemental Agreement. County shall have no obligation to pay for such Additional Services which have been rendered without prior written authorization of County as hereinabove required.

ARTICLE 8

TIME OF PAYMENT; PAYMENT AND INTEREST; AND RIGHT TO AUDIT

8.1 Time of Payment.

During the performance of the services provided for in this Agreement, monthly payments shall be made based upon that portion of the services which has been completed.

On or about the last day of each calendar month during the performance of the Basic Services to be provided under this Agreement, Test Engineer shall submit to County working documents in any stage of completion to demonstrate incremental the progress of Basic Services and the compensation which is due for percentage completion of Basic Services.

On or about the last day of each calendar month during the performance of the Additional Services to be provided under **Article 7**, A/E shall submit to County working documents in any stage of completion to demonstrate incremental progress of Additional Services under an applicable Supplemental Agreement related thereto, and the compensation which is due for percentage completion of particular Additional Services.

County shall review the documentation and shall pay each statement as set forth in this **Article 8**, however, the approval or payment of any statement shall not be considered evidence of performance by Test Engineer to the point indicated by such statement or of receipt or acceptance by County of the services covered by such statement. Final payment does not relieve Test Engineer of the responsibility of correcting any errors or omissions resulting from Test Engineer's negligence.

Upon submittal of the initial invoice, Test Engineer shall provide the County Auditor 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.

8.2 Prompt Payment Policy.

In accordance with ~~Chapter 2251, V.T.C.A., Texas Government Code~~, payment to Test Engineer will be made within ~~thirty (30) days~~ of the day on which the performance of services was complete, or within ~~thirty (30) days~~ of the day on which the County Auditor receives a correct invoice for services, whichever is later. Test Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

8.2.1

There is a bona fide dispute between County and Test Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or

8.2.2

There is a bona fide dispute between Test Engineer and a subcontractor/ subconsultant or between a subcontractor/ subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Basic Services performed which causes the payment to be late; or

8.2.3

The invoice is not submitted to Williamson County in strict accordance with instructions, if any, on the purchase order, or this Agreement or other such contractual agreement.

The County Auditor shall document to Test Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of **Chapter 2251, V.T.C.A., Texas Government Code**.

ARTICLE 9 PROJECT TEAM

County's Designated Representative for purposes of this Agreement is as follows:

**Williamson County Facilities Department
Attn: Director of Facilities
3101 SE Inner Loop
Georgetown, Texas 78626**

County shall have the right, from time to time, to change the County's Designated Representative by giving Test Engineer written notice thereof. With respect to any action, decision, or determination which is to be taken or made by County under this Agreement, the County's Designated Representative may take such action or make such decision or determination or shall notify Test Engineer in writing of an individual responsible for, and capable of, taking such action, decision, or determination, and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Agreement, in which case, actions taken by County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision, or determination hereunder by County's Designated Representative shall be binding on County; *provided, however*, County's Designated Representative shall not have any right to modify, amend, or terminate this Agreement or executed Supplemental Agreement. County's Designated Representative shall not have any authority to execute a Supplemental Agreement unless otherwise granted such authority by the Williamson County Commissioners Court.

Test Engineer's Designated Representative for purposes of this Agreement is as follows:

Terracon Consultants, Inc.
Harrison J. Schneider, PE – Senior Staff Engineer
800 Paloma Drive, Suite 150
Round Rock, Texas 78665

Test Engineer shall have the right, from time to time, to change Test Engineer's Designated Representative by giving County written notice thereof. With respect to any action, decision, or determination which is to be taken or made by Test Engineer under this Agreement, Test Engineer's Designated Representative may take such action or make such decision or determination, or shall notify County in writing of an individual responsible for and capable of taking such action, decision, or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions, or determinations by Test Engineer's Designated Representative on behalf of Test Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Agreement, in which case, actions taken by Test Engineer's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision, or determination hereunder by Test Engineer's Designated Representative shall be binding on Test Engineer. Test Engineer's Designated Representative shall have the right to modify, amend, and execute Supplemental Agreements on behalf of Test Engineer.

ARTICLE 10 NOTICE

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Test Engineer at the following addresses. If mailed, any notice or communication shall be deemed to be received **three (3) days** after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

County: Williamson County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

With copy to: Williamson County Facilities Department
Attn: Director of Facilities
3101 SE Inner Loop
Georgetown, Texas 78626

and to: Office of General Counsel

Williamson County
710 Main Street, Suite 102
Georgetown, Texas 78626

Test Engineer: Terracon Consultants, Inc.
800 Paloma Drive, Suite 150
Round Rock, Texas 78665

Attention: Jesse M. Kocher, PE
Senior Principal, Construction Services

Either party may designate a different address by giving the other party **ten (10) days** written notice.

ARTICLE 11 PROGRESS EVALUATION

Test Engineer shall, from time to time during the progress of the Basic Services, and, when applicable, progress of Additional Services, confer with County at County's election. Test Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Basic Services and any applicable Additional Services. At the request of County or Test Engineer, conferences shall be provided at Test Engineer's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Test Engineering Services. County may, from time to time, require Test Engineer to appear and provide information to the Williamson County Commissioners Court.

Should County determine that the progress in Basic Services or any applicable Additional Services does not satisfy the terms of this Agreement then County shall review same with Test Engineer to determine corrective action required.

Test Engineer shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Basic Services and any applicable Additional Services, including but not limited to the following:

11.1

Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of this Agreement or preclude the attainment of Project Basic Services and any applicable Additional Services by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and

11.2

Favorable developments or events which enable meeting goals sooner than anticipated in relation to this Agreement or any applicable Supplemental Agreement.

ARTICLE 12 CHANGES IN COMPLETED BASIC SERVICES

If County deems it necessary to request changes to previously satisfactorily completed Basic Services or parts thereof which involve changes to the original Basic Services or character of Basic Services under this Agreement, then Test Engineer shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Services and paid for as specified under **Article 7** and **Article 8**. Test Engineer shall make revisions to Basic Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Basic Services.

ARTICLE 13 REVIEW PROCESS AND REVISIONS TO TEST ENGINEER WORK PRODUCT

13.1 Review Process.

Test Engineer's Work Product will be reviewed by County under its applicable technical requirements and procedures, as follows:

13.1.1 Submittal.

Reports, plans, surveys, field notes, original drawings, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, data, sketches and/or schematics prepared by Test Engineer and supporting documents (collectively referred to hereinabove and hereinafter as the "Test Engineer Work Product(s)"), shall be submitted by Test Engineer on or before the dates specified for completion, as set out in the Production Schedule set forth in Exhibit C.

13.1.2 Completion.

Reports, plans, specifications, and supporting documents shall be submitted by Test Engineer on or before the dates specified in Exhibit C. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in Exhibit A have been included in compliance with the requirements of this Agreement. The completeness of any Basic Services submitted to County shall be determined by County within **thirty (30) days** of such submittal and County shall notify Test Engineer in writing within such **thirty (30)-day** period if such Basic Services have been found to be incomplete. If the submission is Complete, County will notify Test Engineer and County's technical review process will begin.

If the submission is not Complete, County will notify Test Engineer, who shall perform such professional services as are required to complete the Basic Services and resubmit it to County. This process shall be repeated until a submission is Complete.

13.1.3 Acceptance.

County will review the completed Basic Services for compliance with this Agreement. If necessary, the completed Basic Services will be returned to Test Engineer, who shall perform any required Basic Services and resubmit to County. This process shall be repeated until the Basic Services are Accepted. "Acceptance" or "Accepted" shall mean that in County's reasonable opinion, substantial compliance with the requirements of this Agreement has been achieved.

13.1.4 Final Approval.

After Acceptance, Test Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by County. "Final Approval" in this sense shall mean formal recognition that the Basic Services have been fully carried out.

13.2 Revision to Test Engineer Work Product.

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

13.3 Days.

All references to a "day" in this Agreement shall mean a calendar day unless otherwise specified.

13.4 County's Reliance on Test Engineer.

Test Engineer's duties as set forth herein shall at no time be in any way diminished by reason of any review, evaluation, or approval by County nor shall Test Engineer be released from any liability by reason of such review, evaluation or approval by County, it being understood that County, at all times, is ultimately relying upon Test Engineer's skill, ability, and knowledge in performing the Basic Services required hereunder.

ARTICLE 14 SUSPENSION

Should County desire to suspend the Basic Services, but not to terminate this Agreement, then such suspension may be effected by County giving Test Engineer **thirty (30) calendar days'** verbal notification followed by written confirmation to that effect. Such **thirty (30)-day** notice may be waived in writing by agreement and signature of both parties. The Basic Services may be reinstated and resumed in full force and effect within **sixty (60) days** of receipt of written notice from County to resume the Basic Services. Such **sixty (60)-day** notice may be waived in writing by agreement and signature of both parties. If this Agreement is suspended for more than **thirty (30) days**, Test Engineer shall have the option of terminating this Agreement and, in the event, Test Engineer shall be compensated for all Basic Services performed and reimbursable expenses incurred, provided such Basic Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

-County assumes no liability for Basic Services performed or costs incurred prior to the date authorized by County for Test Engineer to begin Basic Services, and/or during periods when Basic Services are suspended, and/or subsequent to the completion date.

ARTICLE 15 VIOLATION OF CONTRACT TERMS/ BREACH OF CONTRACT

Violation of contract terms or breach of contract by Test Engineer shall be grounds for termination of this Agreement, and any increased costs arising from Test Engineer's default, breach of contract, or violation of contract terms shall be paid by Test Engineer.

ARTICLE 16 TERMINATION

This Agreement may be terminated as set forth below.

16.1

By mutual agreement and consent, in writing, of both parties.

16.2

By County, by notice in writing to Test Engineer, as a consequence of failure by Test Engineer to perform the Basic Services set forth herein in a satisfactory manner.

16.3

By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

16.4

By County, for reasons of its own and not subject to the mutual consent of Test Engineer, upon not less than **thirty (30) days** written notice to Test Engineer.

16.5

By satisfactory completion of all Testing Engineer Engineering Services and obligations described herein.

Should County terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Test Engineer. In determining the value of the Basic Services performed by Test Engineer prior to termination, County shall be the sole judge. Compensation for Basic Services at termination will be based on a percentage of the Basic Services completed at that time. Should County terminate this Agreement under **Section 16.4** above, then the amount charged during the thirty-day notice period shall not exceed the amount charged during the preceding **thirty (30) days**.

If Test Engineer defaults in the performance of this Agreement or if County terminates this Agreement for fault on the part of Test Engineer, then County shall give consideration to the actual costs incurred by Test Engineer in performing the Basic Services to the date of default, the amount of Basic Services required which was satisfactorily completed to date of default, the value of the Basic Services which are usable to County, the cost to County of employing another firm to complete the Basic Services required and the time required to do so, and other factors which affect the value to County of the Basic Services performed at the time of default.

The termination of this Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Agreement. If the termination of this Agreement is due to the failure of Test Engineer to fulfill its contractual obligations, then County may take over the Project and prosecute the Basic Services to completion. In such case, Test Engineer shall be liable to County for any additional and reasonable costs incurred by County.

Test Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Test Engineer in support of the Basic Services under this Agreement.

ARTICLE 17 USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications, and data or programs stored electronically, (hereinafter referred to as "Test Engineer Work Products") prepared by Test Engineer and its subcontractors/ subconsultants are related exclusively to the services described

in this Agreement and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Test Engineer's designs under this Agreement (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to Test Engineer.

By execution of this Agreement and in confirmation of the fee for services to be paid under this Agreement, Test Engineer hereby conveys, transfers, and assigns to County all rights under the **Federal Copyright Act of 1976** (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and Work Product developed under this Agreement. Copies may be retained by Test Engineer. Test Engineer shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by Test Engineer or anyone connected with Test Engineer, including agents, employees, Engineers or subcontractors/ subconsultants. All documents so lost or damaged shall be replaced or restored by Test Engineer without cost to County.

Upon execution of this Agreement, Test Engineer grants to County permission to reproduce Test Engineer's work and documents for purposes of constructing, using, and maintaining the Project, provided that County will comply with its obligations, including prompt payment of all sums when due, under this Agreement. Test Engineer shall obtain similar permission from Test Engineer's subcontractors/ subconsultants consistent with this Agreement. If and upon the date Test Engineer is adjudged in default of this Agreement, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the work and documents for the purposes of completing, using, and maintaining the Project.

County shall not assign, delegate, sublicense, pledge, or otherwise transfer any permission granted herein to another party without the prior written consent of Test Engineer. However, County shall be permitted to authorize the contractor, subcontractors, and material or equipment suppliers to reproduce applicable portions of Test Engineer Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Test Engineer Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of Test Engineer Work Products shall be at County's sole risk and without liability to Test Engineer and its subconsultants.

Prior to Test Engineer providing to County any Test Engineer Work Products in electronic form or County providing to Test Engineer any electronic data for incorporation into Test Engineer Work Products, County and Test Engineer shall, by separate written agreement, set forth the specific conditions governing the format of such Test Engineer Work Products or electronic data, including any special limitations not otherwise provided in this Agreement. Any electronic files

are provided by Test Engineer for the convenience of County and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Test Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Test Engineer shall be relied upon.

Test Engineer shall have no liability for changes made to the drawings by other consultants subsequent to the completion of the Project. Any such change shall be sealed by Test Engineer making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 18 PERSONNEL, EQUIPMENT, AND MATERIAL

Test Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Basic Services, and adequate and sufficient personnel and equipment to perform the Basic Services as required. All employees of Test Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Test Engineer who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Basic Services shall immediately be removed from association with the Project when so instructed by County. Test Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Basic Services required under this Agreement, or will obtain such personnel from sources other than County. Test Engineer may not change the Project Manager without prior written consent of County.

ARTICLE 19 SUBCONTRACTING

Test Engineer shall not assign, subcontract, or transfer any portion of the Basic Services under this Agreement without prior written approval from County. All subcontracts shall include the provisions required in this Agreement. No subcontract shall relieve Test Engineer of any responsibilities under this Agreement.

ARTICLE 20 MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the right herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

ARTICLE 21 COMPLIANCE WITH LAWS

21.1 Compliance.

Test Engineer shall render the services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the construction materials testing profession, and in recognition of such standards, Test Engineer shall comply with all applicable federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, minimum/ maximum salary and wage statutes and regulations, and licensing laws and regulations. Test Engineer shall furnish County with satisfactory proof of its compliance.

Test Engineer shall further obtain all permits and licenses required in the performance of the Basic Services contracted for herein.

21.2 Taxes.

Test Engineer shall pay all taxes, if any, required by law arising by virtue of the Basic Services performed hereunder. County is qualified for exemption pursuant to the provisions of **Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.**

ARTICLE 22 INDEMNIFICATION

TEST ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY TEST ENGINEER, TEST ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH TEST ENGINEER INCLUDING, WITHOUT LIMITATION, TEST ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH TEST ENGINEER EXERCISES CONTROL.

TEST ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM TEST ENGINEER'S FAILURE TO PAY TEST ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS AGREEMENT BY TEST ENGINEER.

TEST ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT

NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY TEST ENGINEER IN THE PERFORMANCE OF THIS AGREEMENT.

THE LIMITS OF INSURANCE REQUIRED IN THIS AGREEMENT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT TEST ENGINEER'S OBLIGATIONS UNDER THIS ARTICLE 22. THE TERMS AND CONDITIONS CONTAINED IN THIS ARTICLE 22 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF COUNTY OR THIRD PARTIES FOR WHOM TEST ENGINEER IS NOT LEGALLY LIABLE, TEST ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO TEST ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST COUNTY IN WHICH CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY ACTS, ERRORS OR OMISSIONS OF TEST ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY TEST ENGINEER, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS IN THE CONSTRUCTION DOCUMENTS OR IN THE ADMINISTRATION OF THIS AGREEMENT BY TEST ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY TEST ENGINEER, AND/OR INADEQUATE SERVICES PURSUANT TO THE CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT AS DEFINED AND REQUIRED BY THIS AGREEMENT, AGREEMENT EXHIBITS AND THE CONSTRUCTION CONTRACT DOCUMENTS, THEN COUNTY SHALL HAVE THE RIGHT TO JOIN TEST ENGINEER AT COUNTY'S COST. TEST ENGINEER SHALL ALSO HOLD COUNTY HARMLESS AND INDEMNIFY COUNTY TO THE EXTENT THAT TEST ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH TEST ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE TEST ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH TEST ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

ARTICLE 23 PROFESSIONAL'S RESPONSIBILITIES

Test Engineer shall be responsible for the accuracy of its Professional Services and shall promptly make necessary revisions or corrections to its Work Product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine Test Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of Article 31. Test Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or

for clarification of any ambiguities until after the construction phase of the Project has been completed.

ARTICLE 24 PROFESSIONAL'S SEAL

The responsible geotechnical and construction materials testing engineer shall sign, seal, and date all appropriate submissions to County in accordance with Texas laws and the rules of the State Board of Registration for Engineering Professionals.

ARTICLE 25 INSURANCE

Test Engineer shall comply with the following insurance requirements, at all times, during this Agreement:

25.1 Coverage Limits.

Test Engineer, at Test Engineer's sole cost, shall purchase and maintain, during the entire term while this Agreement is in effect, the following insurance:

25.1.1

Worker's Compensation in accordance with statutory requirements.

25.1.2

Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

25.1.3

Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000 per occurrence and \$1,000,000 in the aggregate.

25.1.4

Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000 per claim.

25.2 Additional Insureds; Waiver of Subrogation.

County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary; and, any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.

25.3 Premiums and Deductible.

Test Engineer shall be responsible for payment of premiums for all insurance coverages required under this Article 25. Test Engineer further agrees that for each claim, suit, or action made against insurance provided hereunder, with respect to all matters for which Test Engineer is responsible hereunder, Test Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in Test Engineer's insurance must be declared and approved in writing by County in advance.

25.4 Commencement of Work.

Test Engineer shall not commence any work under this Agreement until it has obtained all required insurance and such insurance has been approved by County. As further set out below, Test Engineer shall not allow any subcontractor/ subconsultant(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved; and, such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Test Engineer hereunder.

25.5 Insurance Company Rating.

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.

25.6 Certification of Coverage.

Test Engineer shall furnish County with a certification of coverage issued by the insurer. Test Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. In addition to any other notification requirements set forth hereunder, Test Engineer shall also notify County, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.

25.7 No Arbitration.

It is the intention of County and agreed to and hereby acknowledged by Test Engineer, that no provision of this Agreement shall be construed to require County to submit to mandatory arbitration 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 hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Agreement.

25.8 Subcontractor/ Subconsultant's Insurance.

Without limiting any of the other obligations or liabilities of Test Engineer, Test Engineer shall require each subcontractor/ subconsultant performing work under this Agreement (to the extent a subcontractor/ subconsultant is allowed by County) to maintain during the term of this Agreement, at the subcontractor/ subconsultant's own expense, the same stipulated minimum insurance required in this Article 25 above, including the required provisions and additional policy conditions as shown below in this Article 25.

Test Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements. Test Engineer must retain the certificates of insurance for the duration of this Agreement and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

25.9 Insurance Policy Endorsements.

Each insurance policy shall include the following conditions by endorsement to the policy:

25.9.1

County shall be notified **thirty (30) days** prior to the expiration, cancellation, nonrenewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

**Williamson County Purchasing
100 Wilco Way
Suite P101
Georgetown, Texas 78626**

25.10.1

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

25.10 Cost of Insurance.

The cost of all insurance required herein to be secured and maintained by Test Engineer shall be borne solely by Test Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such certificates of insurance are evidenced as Exhibit F.

ARTICLE 26 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Test Engineer may not assign, sublet, or transfer any interest in this Agreement, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

ARTICLE 27 SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 28 PRIOR AGREEMENTS SUPERSEDED

This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter defined herein. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

ARTICLE 29 TEST ENGINEER'S ACCOUNTING RECORDS

Test Engineer agrees to maintain, for a period of **three (3) years** after final payment under this Agreement, detailed records, books, documents, and papers which are directly pertinent to the services to be performed under this Agreement and records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for purposes of making audits, examinations, excerpts and transcriptions. Test Engineer 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 detailed records, books, documents, and papers which are directly pertinent to the services to be performed under this Agreement and records of reimbursable costs and expenses of other providers for the purposes of making audits, examinations, excerpts, and transcriptions. Test Engineer further agrees that County shall have access during normal working hours to all necessary Test Engineer facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this **Article 29**. County shall give Test Engineer reasonable advance notice of intended audits.

ARTICLE 30 GENERAL PROVISIONS

30.1 Time is of the Essence.

Test Engineer understands and agrees that time is of the essence and that any failure of Test Engineer to complete the Basic Services within the agreed Production Schedule set out in Exhibit C may constitute a material breach of this Agreement. Test Engineer shall be fully responsible for its delays or for failures to use its reasonable efforts in accordance with the terms of this Agreement and Test Engineer's standard of performance as defined herein. Where damage is caused to County due to Test Engineer's negligent failure to perform, County may accordingly

withhold, to the extent of such damage, Test Engineer's payments hereunder without waiver of any of County's additional legal rights or remedies.

30.2 Force Majeure.

Neither County nor Test Engineer shall be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

30.3 Enforcement and Venue.

This Agreement shall be enforceable in Georgetown, Williamson County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

30.4 Standard of Performance.

The standard of care for all professional construction materials testing engineering services performed or furnished by Test Engineer and its employees under this Agreement will be the care and skill ordinarily used by members of Test Engineer's profession, practicing under the same or similar circumstances at the same time and in the same locality.

30.5 Opinion of Probable Cost.

Any opinions of probable Project cost or probable construction cost provided by Test Engineer are made on the basis of information available to Test Engineer and on the basis of Test Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional. However, since Test Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Test Engineer does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Test Engineer prepares.

30.6 Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

30.7 Reports of Accidents.

Within twenty-four (24) hours after Test Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of Test Engineer), whether or not it results from, or involves, any action or failure to act by Test Engineer or any employee or agent of Test Engineer and which arises in any manner from the performance of this Agreement, Test Engineer shall

send a written report of such accident or other event to County, setting forth a full and concise statement of the facts pertaining thereto. Test Engineer shall also immediately send to County a copy of any summons, subpoena, notice, or other documents served upon Test 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 Test Engineer's performance of work under this Agreement.

30.8 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.

30.9 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.

30.10 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.

30.11 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, 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.

30.12 Texas Public Information Act.

To the extent, if any, that any provision in this Agreement is in conflict with **Texas Government 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.

30.13 Governing Terms and Conditions.

If there is an irreconcilable conflict between the terms and conditions set forth in this Agreement or any Supplemental Agreement and the terms and conditions set forth in any Exhibit, Appendix to this Agreement, the terms and conditions set forth in this Agreement or any Supplemental Agreement shall control over the terms and conditions set forth in any Exhibit, Appendix to this Agreement.

30.14 Appropriation of Funds by County.

County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Test Engineer understands and agrees that County's payment of amounts under this Agreement is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement. It is further understood and agreed by Test Engineer that County shall have the right to terminate this Agreement at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may affect such termination by giving written notice of termination to Test Engineer.

ARTICLE 31 DISPUTE RESOLUTION

Except as otherwise specifically set forth herein, County and Test Engineer shall work together in good faith to resolve any controversy, dispute, or claim between them which arises out of or relates to this Agreement, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within **thirty (30) days** following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. ~~A single mediator engaged in the practice of law, who is knowledgeable~~ about subject matter of this Agreement, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Agreement shall be conducted in Williamson County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation, if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of this Agreement.

ARTICLE 32 EQUAL OPPORTUNITY IN EMPLOYMENT

The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because

of race, color, religion, sex, or national origin. The parties to this Agreement 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.

ARTICLE 33 MERGER

The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

ARTICLE 34 PUBLIC CONTACT

Contact with the news media, citizens of Williamson County or governmental agencies shall be the responsibility of County. Under no circumstances shall Test Engineer release any material or information developed in the performance of its services hereunder without the express written permission of County.

ARTICLE 35 TEST ENGINEER'S REPRESENTATIONS

Test Engineer represents that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the services and perform its obligation under this Agreement and under the Contract Documents. Test Engineer further represents and acknowledges that: (a) it is a sophisticated business entity that possesses the required level of experience and expertise in business administration, construction, and contract administration of projects of similar or like size, complexity, and nature as the Project and (b) the fee stated in this Agreement is adequate compensation for the timely completion of the Basic Services.

ARTICLE 36 SIGNATORY WARRANTY

The undersigned signatory for Test Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Agreement and that he/she has full and complete authority to enter into this Agreement on behalf of the firm. The above-

stated representations and warranties are made for the purpose of inducing County to enter into this Agreement.

IN WITNESS WHEREOF, County has caused this Agreement to be signed in its name by its duly authorized County Judge, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

TEST ENGINEER:

Terracon Consultants, Inc.

By: Jesse M. Kocher

Signature

Jesse M. Kocher

Printed Name

Senior Principal

Title

Date Signed: 9/27/2022

COUNTY:

Williamson County, Texas

By: Bill Gravell

Signature

Bill Gravell

Printed Name

County Judge

Title

Date Signed: Oct 4, 2022

EXHIBIT A

BASIC SCOPE OF SERVICES

THE FOLLOWING SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THIS AGREEMENT. TO THE EXTENT THIS SCOPE OF SERVICES IS INCONSISTENT WITH THIS AGREEMENT, THIS AGREEMENT WILL SUPERSEDE THE SCOPE OF SERVICES AND WILL BE CONTROLLING.

In consideration of the Basic Fee provided in this Agreement, Test Engineer shall perform the following Basic Services, based on standard construction materials testing engineering practices:

GENERAL REQUIREMENTS

Right-of-Entry and Coordination. Test Engineer shall notify County and secure permission to enter private property to perform any surveying, environmental, engineering or geotechnical activities needed off County property. In pursuance of County's policy with the general public, Test Engineer shall not commit acts which would result in damages to private property, and Test Engineer shall make every effort to comply with the wishes and address the concerns of affected private property owners. Test Engineer shall contact each property owner prior to any entry onto the owner's property and shall request concurrence from County prior to each entry.

Progress Reporting. Test Engineer shall submit monthly (at a minimum) a progress status e-mail to County's Project Manager (PM) regardless of whether Test Engineer is invoicing for that month.

Coordination. Test Engineer shall coordinate issues through County's PM. County will communicate resolution of issues and provide Test Engineer direction through County's PM.

Quality Assurance (QA) and Quality Control (QC). Test Engineer shall provide peer review at all levels. For each deliverable, Test Engineer shall maintain evidence of their internal review and mark-up of that deliverable as preparation for submittal. When internal mark-ups are requested by County in advance, County, at its sole discretion, may reject the deliverable should Test Engineer fail to provide the evidence of quality control. Test Engineer shall clearly label each document submitted for quality assurance as an internal mark-up document.

Naming of Electronic Project Files and Organization of Design Project Folders. Test Engineer shall use succinct and understandable file names including project name, file content, date created (i.e. "Project Name_SD PLANS_year.month.day"). Test Engineer shall maintain files in an organized folder structure that is readily understandable to outside users to facilitate communication and minimize complications in project close-out.

GENERAL SCOPE OF SERVICES

Concrete – Test Engineer scope of services includes sampling concrete and conducting slump and concrete compressive strength tests. Test Engineer personnel do not have the authority / responsibility to accept or reject concrete even if it does not comply with the project specifications. Test Engineer make 4-inch diameter, 8-inch high cylinders for compressive strength testing whenever the aggregate size allows; however, 6-inch diameter, 12-inch high cylinders will be used when larger aggregate is used in the concrete or when requested by County (6"x12" cylinder rate will be used). Test Engineer will rely on the contractor or concrete supplier to provide adequate facilities for initial (and field) curing of test cylinders as required by ASTM C 31 test procedures. Test Engineer scope of services also includes spot observations of the formwork dimensions and the reinforcing steel size, spacing, and configuration on a periodic basis prior to concrete placement.

Test Engineer scope of services does not include plastic unit weight testing of concrete. Test Engineer scope of services does not include continuous observation of concrete placement for proper application techniques, periodic observation of the maintenance of specified curing temperatures and/or techniques for constructed structures, review of the erection procedures and temporary bracing for precast concrete members or verification of in-situ concrete strength prior to removal of shores and forms.

Soils – Test Engineer scope of services includes sampling and testing of soils, periodic observation of earthwork operations, and moisture-density testing of subgrade and compacted fills.

Test Engineer scope of services does not include verification of the use of proper materials, densities and lift thicknesses during placement and compaction of compacted fill on a continuous basis. Test Engineer scope of services also excludes sampling, testing and evaluation of materials below shallow foundations to determine whether they are adequate to achieve the design bearing capacity. The adequacy of shallow footing subgrade soils will be based on recommendations in the geotechnical engineering report (or structural engineer's notes if a geotechnical engineering report is not provided) and visual observations of the foundation excavation bottom.

Asphalt – Test Engineer scope of services includes observation of the asphalt paving operations, sampling asphalt and conducting laboratory tests. These services may be provided on a parttime or full-time basis as authorized by County.

EXHIBIT B

FEE SCHEDULE

CONSTRUCTION MATERIALS OBSERVATION AND TESTING RIVER RANCH REGRADING TERRACON PROPOSAL NO. PAC221099 REV. 1

Earthwork Observation/Testing				
Service	Quantity	Unit	Unit Rate	Estimate
Moisture/Density Curve (ASTM D698)	4	Each	\$ 220.00	\$ 880.00
Moisture/Density Curve (ASTM D1557)	0	Each	\$ 240.00	\$ -
Add'l Charge for Coarse Aggregate Correction	4	Each	\$ 40.00	\$ 160.00
Moisture/Density Curve (Tex-113-E)	1	Each	\$ 300.00	\$ 300.00
Moisture/Density Curve (Tex-114-E)	0	Each	\$ 220.00	\$ -
Atterberg Limits (ASTM D4318)	5	Each	\$ 80.00	\$ 400.00
Sieve Analyses (ASTM C136 & C117)	5	Each	\$ 130.00	\$ 650.00
Riprap Sieve Analysis (ASTM D5519)	3	Each	\$ 500.00	\$ 1,500.00
Field Nuclear Density (ASTM D6938)	66	Each	\$ 20.00	\$ 1,320.00
Technician (Paving Area), 5 trips	15	Hour	\$ 68.00	\$ 1,020.00
Technician (Utilities), 13 trips	39	Hour	\$ 68.00	\$ 2,652.00
Technician, Overtime Rate	0	Hour	\$ 102.00	\$ -
Vehicle Trip Charge	18	Per Trip	\$ 60.00	\$ 1,080.00
Subtotal, Earthwork				\$ 9,962.00

This estimate is based on providing density testing on paving and utilities.

Reinforcing Steel Observation				
Service	Quantity	Unit	Unit Rate	Estimate
Technician, Regular Rate, 10 trips	30	Hour	\$ 68.00	\$ 2,040.00
Technician, Overtime Rate	0	Hour	\$ 102.00	\$ -
Vehicle Trip Charge	10	Per Trip	\$ 60.00	\$ 600.00
Subtotal, Reinforcing Steel				\$ 2,640.00

This estimate is based on 10 trips for reinforcing steel observation.

Concrete Observation/Testing				
Service	Quantity	Unit	Unit Rate	Estimate
Technician (Inlets & Headwalls), 20 trips	60	Hour	\$ 62.00	\$ 3,720.00
Technician (Inlets & Headwalls), OT	0	Hour	\$ 93.00	\$ -
Concrete Cylinders, (ASTM C31 & C39)	100	Each	\$ 20.00	\$ 2,000.00
Vehicle Trip Charge	20	Per Trip	\$ 60.00	\$ 1,200.00
Vehicle Trip Charge (Cylinder Pick-Up)	20	Per Trip	\$ 60.00	\$ 1,200.00
Cylinder Pick-Up	40	Hour	\$ 62.00	\$ 2,480.00
Subtotal, Concrete				\$ 10,600.00

This estimate is based on 20 trips for concrete observation and testing. This estimate also includes 20 trips to the project site to pick up concrete test cylinders cast the previous day.

**CONSTRUCTION MATERIALS OBSERVATION AND TESTING
RIVER RANCH REGRADING
TERRACON PROPOSAL NO. PAC221099 REV. 1**

Asphalt Concrete Testing				
Service	Quantity	Unit	Unit Rate	Estimate
Molding Specimens	3	Per Set of 3	\$ 75.00	\$ 225.00
Bulk Specific Gravity	3	Per Set of 3	\$ 50.00	\$ 150.00
Maximum Theoretical Specific Gravity	3	Each	\$ 75.00	\$ 225.00
Extraction/Gradation	3	Each	\$ 200.00	\$ 600.00
Asphalt Technician	6	Per Hour	\$ 62.00	\$ 372.00
Vehicle Trip Charge	3	Per Trip	\$ 60.00	\$ 180.00
Subtotal, Asphalt Concrete				\$ 1,752.00

This estimate is based on providing laboratory testing on bulk asphalt samples with a paving schedule of 3 days.

Project Management / Supervision / Administration / Scheduling				
Service	Quantity	Unit	Unit Rate	Estimate
Administration	8	Hour	\$ 60.00	\$ 480.00
Project Manager	25	Hour	\$ 135.00	\$ 3,375.00
Subtotal, Project Management				\$ 3,855.00

ESTIMATE TOTAL	\$ 28,609.00
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EXHIBIT C

PRODUCTION SCHEDULE

SCHEDULING

Coordination. Test Engineer shall provide construction testing services as requested by County.

County shall provide notification to Test Engineer for the desired on-site arrival time of technicians to perform the requested observation / testing services at least 72 hours (3 business days) for all trips made for the performance of structural steel testing/inspection services and 24 hours (1 business day) for all trips made for the performance of other testing/inspection.

EXHIBIT D

WILLIAMSON COUNTY VENDOR REIMBURSEMENT POLICY

The purpose of this Williamson County Vendor Reimbursement Policy ("Policy") is to provide clear guidelines to vendors on Williamson County's expectations and requirements regarding allowable reimbursable expenditures and required backup. The Policy will also minimize conflicts related to invoice payments and define non-reimbursable items. This Policy is considered a guideline and is not a contract.

This Policy may be altered, deleted, or amended at any time and without prior notice to vendors, by action of the Williamson County Commissioners Court. Unenforceable provisions of this Policy, as imposed by applicable law, regulations, or judicial decisions, shall be deemed to be deleted. Any revisions to this Policy will be distributed to all current vendors doing business with County.

1. Invoices and Affidavits

- 1.1 Invoices must adequately describe the goods or services provided to County and include all required backup (i.e. reimbursable expenses, mileage log, timesheets, receipts detailing expenses incurred etc.) that is in a form acceptable to the Williamson County Auditor. Invoices that do not adequately describe the goods or services provided to County or contain backup that is not satisfactory to the Williamson County Auditor will be returned to vendor for revisions and the provision above relating to invoice errors resolved in favor of County shall control as to the required actions of vendor and when such invoice must be paid by County.
- 1.2 In the event an invoice includes charges based upon hourly billing rates for services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to County or whether they are the basis of invoices from subcontractors for which the vendor seeks reimbursement from County, the charges shall be accompanied by an affidavit signed by an officer or principal of the vendor certifying that the work was performed, it was authorized by County and that all information contained in the invoice that is being submitted is true and correct.
- 1.3 Upon County's request, vendors must submit all bills paid affidavits wherein vendor must swear and affirm that vendor has paid each of its subcontractors, laborers, suppliers and material in full for all labor and materials provided to vendor for or in connection with services and work performed for County and, further, vendor must swear and affirm that vendor is not aware of any unpaid bills, claims, demands, or causes of action by any of its subcontractors, laborers, suppliers, or material for or in connection with the furnishing of labor or materials, or both, for services and work performed for County.

2. Travel Reimbursement

- 2.1** County will only cover costs associated with travel on vendors outside a 50-mile radius from Williamson County, Texas.
- 2.2** County will only cover costs associated with travel as documented work for County. If a vendor is also doing business for another client, the travel costs must be split in proportion to the amount of work actually performed for County and the other client. The only allowable travel expense will be for the specific days worked for Williamson County.
- 2.3** No advance payments will be made to vendor for travel expenditures. The travel expenditure may only be reimbursed after the expenditure/trip has already occurred and vendor has provided the Williamson County Auditor with all necessary and required backup.
- 2.4** Vendors must submit all travel reimbursement requests on each employee in full. Specifically, a travel reimbursement request must include all related travel reimbursement expenses relating to a particular trip for which vendor seeks reimbursement. Partial travel reimbursement requests will not be accepted (i.e. vendor shall not submit hotel and mileage one month then the next month submit rental car and airfare). If the travel reimbursement appears incomplete, the invoice will be sent back to the vendor to be submitted when all information is ready to submit in full.
- 2.5** Reimbursement for transportation costs will be at the most reasonable means of transportation (i.e.: airline costs will be reimbursed for coach rate, rental car costs will only be reimbursed if rental car travel was most reasonable means of travel as compared to travel by air).
- 2.6** County will not be responsible for, nor will County reimburse additional charges due to personal preference or personal convenience of individual traveling.
- 2.7** County will not reimburse airfare costs if airfare costs were higher than costs of mileage reimbursement.
- 2.8** Additional expenses associated with travel that is extended to save costs (i.e. Saturday night stay) may be reimbursed if costs of airfare would be less than the cost of additional expenses (lodging, meals, car rental, mileage) if the trip had not been extended. Documentation satisfactory to the Williamson County Auditor will be required to justify expenditure.
- 2.9** County will only reimburse travel expense to necessary personnel of the vendor (i.e. no spouse, friends, or family members).

- 2.10** Except as otherwise set forth herein, a vendor must provide a paid receipt for all expenses. If a receipt cannot be obtained, a written sworn statement of the expense from the vendor may be substituted for the receipt.
- 2.11** Sales tax for meals and hotel stays are the only sales taxes that will be reimbursed. Sales tax on goods purchased will not be reimbursed. A sales tax exemption form is available from the Williamson County Auditor's Office upon request.
- 2.12** County will not pay for any late charges on reimbursable items. It is the responsibility of the vendor to pay the invoice first and seek reimbursement from County.

3. Meals

- 3.1** Meal reimbursements are limited to a maximum of \$50.00 per day on overnight travel. On day travel (travel that does not require an overnight stay), meal reimbursements are limited to a maximum of \$20.00 per day. The travel must be outside the Williamson County, Texas line by a 50-mile radius.
- 3.2** Receipts are required on meal reimbursement amounts up to the maximum per day amount stated for overnight or day travel. If receipts are not presented, the vendor can request per diem (per diem limits refer to 3.2). However, a vendor cannot combine per diem and meal receipts. Only one method shall be allowed.
- 3.3** Meals are reimbursable only for vendors who do not have the necessary personnel located within a 50-mile radius of Williamson County, Texas that are capable of carrying the vendor's obligations to County. Meals will not be reimbursed to vendors who are located within a 50-mile radius of Williamson County, Texas.
- 3.4** County will not reimburse for alcoholic beverages.
- 3.5** Tips are reimbursable but must be reasonable to limitation of meal allowance
- 3.6** No meals purchased for entertainment purposes will be allowed.
- 3.7** Meal reimbursement must be substantiated with a hotel receipt.

4. Lodging

- 4.1** Hotel accommodations require an itemized hotel folio as a receipt. The lodging receipt shall include name of the motel/hotel, number of occupant(s), goods or services for each individual charge (room rental, food, tax, etc.) and the name of the occupant(s). Credit card receipts or any other form of receipt are not acceptable.
- 4.2** Vendors will be reimbursed for a single room rate charge plus any applicable tax. If a single room is not available, the vendor must provide documentation to prove that a single room was not available in order to justify the expense over and above the single

room rate. A vendor may also be required to provide additional documentation if a particular room rate appears to be excessive.

- 4.3** Personal telephone charges, whether local or long distance, will not be reimbursed.

5. Airfare

- 5.1** County will only reimburse up to a coach price fare for air travel.
- 5.2** County will exclude any additional charges due to personal preference or personal convenience of the individual traveling (i.e. early bird check in, seat preference charges, airline upgrades, etc. will not be an allowable reimbursement)
- 5.3** Air travel expenses must be supported with receipt copy of an airline ticket or an itinerary with actual ticket price paid. If tickets are purchased through a website, vendor must submit a copy of the webpage showing the ticket price if no paper ticket was issued.
- 5.4** Cancellation and/or change flight fees may be reimbursed by County but vendor must provide the Williamson County Auditor with documentation in writing from a County department head providing authorization for the change.
- 5.5** County will not reimburse vendor for tickets purchased with frequent flyer miles.

6. Car Rental

- 6.1** Vendors that must travel may rent a car at their destination when it is less expensive than other transportation such as taxis, airport shuttles or public transportation such as buses or subways.
- 6.2** ~~Cars rented must be economy or mid-size. Luxury vehicle rentals will not be reimbursed. Any rental costs over and above the cost of a mid-size rental will be adjusted.~~
- 6.3** Vendors will be reimbursed for rental cars if the rental car cost would have been less than the mileage reimbursement cost (based on the distance from vendor's point of origin to Williamson County, Texas) had the vendor driven vendor's car.
- 6.4** Vendors must return a car rental with appropriate fuel levels as required by rental agreement to avoid the car rental company from adding fuel charges.
- 6.5** Rental agreement and credit card receipt must be provided to County as back up for the request for reimbursement.
- 6.6** Insurance purchased when renting vehicle may also be reimbursed.

- 6.7** Car Rental optional extras such as GPS, roadside assistance, and administrative fees on Tolls will not be reimbursed.

7. Personal Car Usage

- 7.1** Personal vehicle usage will be reimbursed in an amount equal to the standard mileage rate allowed by the IRS.
- 7.2** Per code of **Federal Regulations, Title 26, Subtitle A, Chapter 1, Subchapter B, Part IX, Section 274(d)**, all expense reimbursement requests must include the following:
- 7.2.1** Date
 - 7.2.2** Destination
 - 7.2.3** Purpose
 - 7.2.4** Name of traveler(s)
 - 7.2.5** Correspondence that verifies business purpose of the expense
- 7.3** The mileage for a personal vehicle must document the date, location of travel to/from, number of miles traveled and purpose of trip.
- 7.4** Mileage will be reimbursed on the basis of the most commonly used route.
- 7.5** Reimbursement for mileage shall not exceed the cost of a round trip coach airfare.
- 7.6** Reimbursement for mileage shall be prohibited between place of residence and usual place of work.
- 7.7** Mileage shall be calculated from employee's regular place of work or their residence, whichever is the shorter distance when traveling to a meeting or traveling to Williamson County, Texas for vendors who are located outside of Williamson County, Texas by at least a 50-mile radius.
- 7.8** When more than one person travels in same vehicle, only one person may claim mileage reimbursement.
- 7.9** Tolls, if reasonable, are reimbursable. Receipts are required for reimbursement. If a receipt is not obtainable, then written documentation of expense must be submitted for reimbursement (administrative fees on Tolls will not be reimbursed).
- 7.10** Parking fees, if reasonable are reimbursable for meetings and hotel stays. For vendors who contract with a third party for visitor parking at vendor's place of business, Williamson County will not reimburse a vendor based on a percentage of its

contracted visitor parking fees. Rather, Williamson County will reimburse Vendor for visitor parking on an individual basis for each time a visitor uses Vendor's visitor parking. Receipts are required for reimbursement. If a receipt is not obtainable, then written documentation of expense must be submitted for reimbursement.

- 7.11** Operating and maintenance expenses as well as other personal expenses, such as parking tickets, traffic violations, and car repairs and collision damage are not reimbursable.

8. Other Expenses

- 8.1** Taxi fare, bus tickets, conference registrations, parking, etc. must have a proper original receipt.

9. Repayment of Non-reimbursable Expenses

Vendors must, upon demand, immediately repay County for all inappropriately reimbursed expenses whenever an audit or subsequent review of any expense reimbursement documentation finds that such expense was reimbursed contrary to these guidelines and this Policy. Williamson County reserves the right to retain any amounts that are due or that become due to a vendor in order to collect any inappropriately reimbursed expenses that a vendor was paid.

10. Non-Reimbursable Expenses

In addition to the non-reimbursable items set forth above in this Policy, the following is a non-exhaustive list of expenses that will not be reimbursed by Williamson County:

- 10.1** Alcoholic beverages/tobacco products
- 10.2** Personal phone calls
- 10.3** Laundry service
- 10.4** Valet service (excludes hotel valet)
- 10.5** Movie rentals
- 10.6** Damage to personal items
- 10.7** Flowers/plants
- 10.8** Greeting cards
- 10.9** Fines and/or penalties
- 10.10** Entertainment, personal clothing, personal sundries, and service

- 10.11** Transportation/mileage to places of entertainment or similar personal activities
- 10.12** Upgrades to airfare, hotel and/or car rental
- 10.13** Airport parking above the most affordable rate available
- 10.14** Excessive weight baggage fees or cost associated with more than two airline bags
- 10.15** Auto repairs
- 10.16** Babysitter fees, kennel costs, pet, or house-sitting fees
- 10.17** Saunas, massages, or exercise facilities
- 10.18** Credit card delinquency fees or service fees
- 10.19** Doctor bills, prescription and other medical services
- 10.20** Hand tools
- 10.21** Safety Equipment (hard hats, safety vests, etc.)
- 10.22** Office Supplies
- 10.23** Lifetime memberships to any association
- 10.24** Donations to other entities
- 10.25** Any items that could be construed as campaigning
- 10.26** Community outreach items exceeding \$2 per item
- 10.27** Technology Fees
- 10.28** Sales tax on goods purchased

Any other expenses which Williamson County deems, in its sole discretion, to be inappropriate or unnecessary expenditures.

EXHIBIT E

DEBARMENT CERTIFICATION

STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

1. I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Test Engineer and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in paragraph 1(b) of this certification;
 - d. Have not, within a three-year period preceding this application/proposal, had one or more public transactions* terminated for cause or default; and
 - e. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Terracon Consultants, Inc.


Signature of Certifying Official

Jesse M. Kocher
Printed Name of Certifying Official

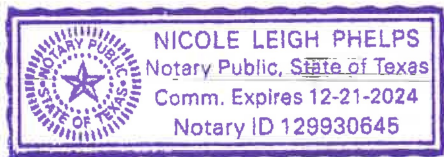
Senior Principal
Title of Certifying Official

9/27/2022
Date

2. Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

* federal, state, or local

SUBSCRIBED and sworn to before me, the undersigned authority, by Jesse Kocher
the Office Manager of Terracon Consultants, on behalf of said firm.
Signatory Title Entity Name



Nicole Leigh Phelps
Notary Public in and for the
State of Texas

My commission expires: 12/21/2024

EXHIBIT F

CERTIFICATES OF INSURANCE

Test Engineer and Subconsultant Certificates of Insurance attached