

**AGENDA ITEM 21**

Consider approving a contract with Doucet & Associates Inc. for CR 137.

Road Bond Manager Mike Weaver stated that the contract with Doucet & Associates includes CR 137, CR 412, CR 300, CR 301, Pond Springs Road and Turtle Rock. These are blanket contracts for construction observation engineering services.

Commissioner Heiligenstein asked Mr. Weaver to describe the process he went through to recommend Doucet & Associates. Mr. Weaver stated that last fall he had sent out requests for qualifications, with responses submitted by approximately 11 firms. They were reviewed by the road bond team and County Engineer Joe England. They narrowed down the choices to 4 firms, and then brought back before the court for approval. They have since negotiated scopes and fees, and have drafted a new contract to meet all of the requirements for the projects.

Moved: **Commissioner Limmer**

Seconded: **Commissioner Heiligenstein**

Motion: To approve a contract with Doucet & Associates, Inc. for construction observation.

Vote: **4 - 0**

< Attachment >

Contract No. Doncut & Associates - Construction Observer

### Checklist

#### Prior to Initiation of Work

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

#### Course of Work

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

#### Notices (as applicable)

**WILLIAMSON COUNTY, TEXAS  
AGREEMENT FOR CONSTRUCTION OBSERVATION  
ENGINEERING SERVICES**

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**THIS AGREEMENT**, made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **WILLIAMSON COUNTY**, hereinafter referred to as the "County", and Doucet & Associates, Inc., a Texas corporation, hereinafter referred to as the "Construction Observer."

**WITNESSETH:**

**WHEREAS**, the County proposes to construct CR 137 (County Line to FM 1660), CR 300/301, CR 412 (FM 619 to CR 421), Pond Springs Road/Turtle Rock Road, and Wyoming Springs Road (FM 1431 to Sam Bass/Brushy Creek), hereinafter referred to as the "Project"; and

**WHEREAS**, the County, having retained the firm of Prime Strategies, Inc., as the Road Bond Program Manager, hereinafter referred to as the "Manager", to represent and assist the County in the planning, design, review, and coordination of the design and construction phases of the Project, and;

**WHEREAS**, the County has retained the consulting engineering firm of Pate Engineers, Inland Civil Associates, WHM Transportation Engineering Consultants, Huggins/Seiler & Associates, and Haynie Consulting, hereinafter called the "Project Engineer", to represent and assist the County in the design, review, and coordination of the design and construction phases of the Project; and

**WHEREAS**, the Project Engineer has prepared the construction plans and specifications for the Project; and

WHEREAS, the Construction Observer has or will retain one or more professional quality assurance engineering firms (collectively, the "Testing Engineer"), as necessary, to provide supplemental professional quality assurance engineering services to those performed by the Contractor, including, but not limited to, sampling, analyzing, and testing of construction materials, performing on-site inspections and testing of construction materials, performing fabrication plant inspections and testing of construction materials, performing concrete and asphalt batch plant sampling, testing, inspection, monitoring, and reporting, and writing and issuing reports of all tests, observations, readings, and analyses conducted; and

WHEREAS, the County and the Construction Observer mutually desire to enter into an agreement for the performance by the Construction Observer of complete and comprehensive construction observation services, as described in the Scope of Services (as hereinafter defined) and otherwise in this Agreement, and other services incidental to and required for the construction of the Project;

NOW, THEREFORE, in consideration of payments hereinafter stipulated to be made to the Construction Observer by the County, the parties do hereby agree as follows:

1. **General.** All services rendered to the County by the Construction Observer under this Agreement shall be performed under the overall direction and instruction of the County and subject to the oversight, monitoring, and reporting of the Manager, all in accordance with accepted professional construction management standards.

2. **Scope of Services.** The services to be provided to the County under this Agreement shall consist of the furnishing of professional services and expertise for the inspection of construction operations on the Project. The services furnished hereunder shall be of professional quality or generally accepted level of care, and shall be complete in all respects regarding the responsibilities described in the Scope of Services and otherwise in this Agreement, and shall comply fully with the terms of this Agreement, and shall include the Scope of Services set forth in Appendix A to this Agreement. All such services shall be subject to the approval of the County, represented by the County Judge or subsequently designated official. A

detailed description of the work to be performed is set forth in the Scope of Services contained in Appendix A attached hereto and made a part of this Agreement.

It is understood and agreed that the Construction Observer shall provide sufficient qualified staffing to perform the tasks described in the scope of services in accordance with the construction schedule. It is further agreed that if additional staff is required to adequately manage the construction activities, the Construction Observer shall be required to furnish the additional staff as authorized and directed by the Manager. All staff employed by the Construction Observer shall have the qualifications and experience, deemed appropriate and adequate by the Manager, necessary to ensure construction of the Project in full conformance with the plans, specifications, and standards issued for the Project.

3. Time Limits and Time for Performance. The Construction Observer agrees to begin the performance of the services designated herein as necessary to coincide with the project construction schedule after receipt by the Construction Observer of the written "Notice To Proceed" from the County. It is the County's intent to issue such Notice to allow approximately ten (10) business days prior to beginning services. The County may issue a single "Notice to Proceed" with respect to all of the work described in this Agreement or multiple, partial "Notices to Proceed" pertaining to only specified portions of the work and authorizing the Construction Observer to begin performance only with regard to said specified portions. The Construction Observer shall furnish all services in such manner and at such times as the development schedules of the Projects require so that no delay in the progression of the construction of the Projects will be caused by or be in any way attributable to the Construction Observer. The requirements contained in this paragraph regarding the commencement, performance, and completion of services under this Agreement constitute the time limits for the Construction Observer's services hereunder.

It is understood and agreed that, subject only to extensions provided as set forth below, the time for performance of construction observation services under this Agreement shall continue for a period of forty-eight ( 48 ) consecutive months beginning with the month in which the "Notice to Proceed" or a partial "Notice to Proceed" is issued by the County.

In the event that, by reason or causes beyond the control of the Construction Observer and its agents, representatives, employees, or subcontractors, the services described herein are stopped, suspended, or delayed, the time limits and the time for performance referenced above shall be extended for a period or periods of time as determined by the County, at its discretion, to allow for said stoppage, suspension, or delay.

Should the Construction Observer at any time, in the opinion of the County, not carry out its obligations under this Agreement or not be progressing toward completion of the services to be rendered hereunder in an expeditious manner, or if the Construction Observer shall fall short in any manner to discharge any other of its obligations under this Agreement, the County shall issue to the Construction Observer written notification of the deficiency and request that the Construction Observer cure the deficiency within ten (10) calendar days after receipt by the Construction Observer of the written notification from the County (cure period). If the Construction Observer has failed to cure the deficiency within the cure period, the Construction Observer shall be considered to be in default, and the County may, having provided the Construction Observer with the previously-described ten (10) day cure period, terminate this Agreement effective on a date following said ten (10) working day cure period (the "Termination Date").

If the County shall terminate this Agreement as provided either in this Section, or Section 7, no fees of any type, other than fees due and payable at the time of termination for work performed and acceptable to the County, shall thereafter be paid to the Construction Observer.

If it is necessary for the County to retain one or more substitute firms to complete and/or correct work to be performed by the Construction Observer under this Agreement, the County may postpone all payments due the Construction Observer hereunder until said work is complete so as to permit the County to make a final determination of additional costs, if any, incurred by the County as a result of the Construction Observers default, said additional costs to be deducted from and set off against any outstanding balance of fees due the Construction Observer.

4. **Consequences of Failure to Properly Manage Staff and/or Complete the Services on Time.** The construction inspection services to be provided by the Construction Observer constitute an essential part of the construction process required to complete the Projects. Further, the Construction Observer acknowledges that the time limits and the specified time for performance set forth in Section 3 constitute essential benefits to the County and essential elements of this Agreement.

Any election by the County to waive remedies shall in no way limit or impair the ability of the County (a) to exercise any and all available remedies in the event of any subsequent default or defaults by the Construction Observer or (b) to otherwise insist upon the Construction Observer's performance under this Agreement in strict accordance with its terms.

In exercising its judgement, the County shall specify in detail and in writing the Construction Observer's failure to perform and shall give the Construction Observer ten (10) calendar days, as described in Section 3, to cure the default.

If the Construction Observer fails to complete any of said services within the time limits fixed by this Agreement, and if the County shall, nevertheless, permit the Construction Observer to continue and complete same, such permission shall neither modify nor waive any liability of the Construction Observer for damages arising from noncompletion of said services within the applicable time limits, but all such liabilities shall continue in full force against the Construction Observer.

5. **Compensation.**

a. The County agrees to pay for the performance, and the Construction Observer agrees to accept as full and sufficient compensation and reimbursement for the performance, of all construction management duties and services as set forth in Appendix A, such sums as are computed using the position rates, vehicle and equipment costs, and service months/hours tabulated and attached hereto as Appendix B. This estimated total compensation of \$750,000.00 for the entire forty-eight (48) month performance period is the maximum amount payable under this contract, unless otherwise modified by written supplemental agreement.

If, through no fault of the Construction Observer, the construction progress require more time than specified above, the Construction Observer shall inform the Manager, in writing, regarding the increase, prior to performing any additional services, and shall submit a proposal to amend the Work Authorization. Upon written approval, this amendment shall then become the new maximum total compensation and reimbursement due the Construction Observer.

No additional reimbursement or compensation shall be granted without written authorization by the Manager and approval by the County Judge and/or Commissioners Court.

The amounts set forth on Appendix B shall constitute full payment for all services, liaison, products, materials, and equipment required to deliver the professional construction management services detailed in the Scope of Services (Appendix A) including travel, overhead, and expenses. No other compensation will be requested or paid, nor shall the amounts set forth on Appendix B be adjusted, except as provided for above.

b. The Construction Observer shall submit monthly to the County one (1) copy of its pay estimate request in the form provided by the County which shall indicate in sufficient detail the work completed through the date thereof and the amount due for such work. Said pay request also shall include all amounts which are reimbursable to the Construction Observer under this Agreement, fully documented and supported by invoices, receipts and other materials reasonably acceptable to the County. The pay estimate requests shall specify the man-months or man-hours (as applicable), position rates, and total price for the services provided by the Construction Observer.

c. The County or Manager shall review the pay estimate request submitted by the Construction Observer within ten (10) working days of receipt and request clarification or additional support for the pay estimate within the ten (10) day review period. If no clarification or additional support is requested, the pay estimate shall be deemed acceptable and payment shall be made within thirty (30) calendar days after it was received by the County. If clarification or additional support is requested, the pay estimate shall be processed and payment



made within thirty (30) calendar days after clarifications or additional support is received and deemed acceptable by the County.

d. No payment by the County shall relieve the Construction Observer of its obligation to deliver timely the construction inspection services required under this Agreement.

e. The County shall have the right at any time to audit all payments previously made to the Construction Observer and/or currently subject to a pay estimate request delivered by the Construction Observer to the County, together with all supporting information related thereto. The purpose of such audit shall be to confirm (i) the accuracy of information submitted by the Construction Observer including, reimbursable and mobilization charges, man-month/man-hour and partial man-month/man-hour calculations, etc.) and (ii) the compliance of all payment calculations with the terms of this Agreement. Any audit performed pursuant to this Section shall be accomplished at the sole expense of the County, unless said audit discloses material overcharges by the Construction Observer, in which case, without limiting any other rights or remedies available to the County, the Construction Observer promptly shall reimburse the County for all costs resulting from said audit. The Construction Observer shall cooperate promptly and fully with the County, its agents and representatives, in connection with any audit.

f. Extra Work. It is acknowledged and agreed that the payment of the compensation set forth in Section 5 above and in accordance with Appendix B shall constitute full and complete payment for all services to be performed by the Construction Observer under this Agreement and as set forth in the Scope of Services, Appendix A of this Agreement unless otherwise modified by supplemental agreement. No additional payment will be made for any changes or additions unless it is clearly demonstrated that the work is beyond the scope of this Agreement, including the Scope of Services set forth in Appendix A to this Agreement.

In the event, for reasons beyond the control of the Construction Observer, the Construction Observer is directed by the County (a) to make changes to work already satisfactorily performed and accepted by the County or (b) to perform additional work not currently provided hereunder and being of such magnitude that it is clearly beyond the scope of

this Agreement, and the changes and/or additional work are so recognized by the County, or (c) to provide additional staff in excess of that shown in Appendix B of this Agreement, such changes and/or additional work shall be considered Extra Work. The County reserves the right of final decision regarding whether any additional work constitutes Extra Work, said decision to be made in its reasonable discretion. No compensation shall be made for revisions, changes, or additional work required due in any way to the *negligent* error, omission, or fault of the Construction Observer, its agents, representatives, employees or contractors.

Compensation for such Extra Work shall be allowed when approved in advance and authorized by the Manager and County Judge, the terms of such compensation shall be as set forth in negotiated fee supplemental agreements to which sum all approved and actual out-of-pocket expenses and subcontract costs, if any, shall be added. Salary costs will be defined as direct labor cost plus salary-related costs, including allowance for holidays, sick leave, vacation, employees' group insurance, workers' compensation, social security, unemployment and disability taxes, and miscellaneous employee benefits. Time spent by a principal of the Construction Observer, performing services or functions (a) capable of being carried out by other, subordinate personnel with a lower standard hourly rate and (b) payable by the County, shall be billed at a rate equivalent to that of the applicable qualified subordinate personnel. Time spent by a principal of the Construction Observer in an administrative or supervisory capacity shall not be compensable. Documentation in the form of audited salary-related costs as a percentage of salary costs shall be submitted to the County, together with such other records and documentation as the County may require, to compute accurate compensation for Extra Work. Payments shall be made on the basis of certified time and expense records and audited documentation of salary-related costs.

The Construction Observer shall assign the employees (including its principals), as selected and requested by the Manager, to provide expert engineering services related to legal proceedings, court actions, and settlement negotiations, including services such as engineering research related to impending legal actions, preparation of trial exhibits, serving as expert witnesses, and appearances in court as a non-testifying advisor to the County Attorney, and to the Manager. Compensation to the Construction Observer for such services shall be negotiated

as Extra Work under the provisions of this Section and under Section 16 hereof, with the terms having been agreed upon prior to providing of such services.

6. **Source of Fee Payments and the County's Right to Cancel Prior to Notice to Proceed.** The County has financed the design of the Projects by issuance and sale of General Obligations Bonds, as authorized by the voters in Williamson County in the election held in November 2000, hereinafter referred to as the "Bonds". It is expressly acknowledged that all payments due for the services under this Agreement shall be made solely from the proceeds of the Bonds. Payment for construction inspection services shall conform with the terms pertaining to the issuance of the Bonds. The County shall have no liability under this Agreement or otherwise to make payments to the Construction Observer from any other sources. In addition, the County reserves the right, at its sole discretion, at any time prior to the issuance of the written "Notice To Proceed" described in Section 3 above, to cancel or terminate this Agreement; and, in the event of such cancellation or termination, the Construction Observer shall not be entitled to any payment, nor have any claim for compensation or damages, resulting from such cancellation or termination.

Notwithstanding the preparation or execution of this Agreement, the County is under no obligation to issue the written "Notice to Proceed". Any work undertaken or expenses incurred by the Construction Observer prior to the issuance of the written "Notice to Proceed" shall be at the sole risk and expense of the Construction Observer. After issuance of the written "Notice to Proceed", the Construction Observer promptly shall begin work pursuant to the provisions of this Agreement and shall continuously prosecute same with such diligence as will enable the Construction Observer to comply with this Agreement.

Issuance of the Notice to Proceed by the County will constitute certification that sufficient funds are available and obligated to pay up to the full amount set forth in Section 5 and Appendix B.

7. **County's Option to Terminate; Suspension of Work.** In addition to the rights and options to terminate given in Sections 3, 4, and 7 above, the County has the right to immediately terminate this Agreement at its sole option at any time, and with or without cause,

by issuance of a written Notice of Termination from the Manager, and to make settlement with the Construction Observer upon an equitable basis as determined by the County, which settlement shall fix the value of the work performed by the Construction Observer prior to the termination date (the "Optional Termination Date") in the manner set forth below. In determining the value of the work performed, the County shall consider the following:

a. The ratio of the amount of work satisfactorily performed by the Construction Observer prior to the Optional Termination Date to the total amount of work contemplated to be undertaken by the Construction Observer as set forth in this Agreement.

b. The amount of the direct expense incurred by the Construction Observer for work performed prior to the Optional Termination Date in proportion to the amount of the total direct expense which the Construction Observer would have incurred had it been allowed to complete the work contemplated by the Agreement.

Direct expense shall be the sum of the following items of expense actually incurred by the Construction Observer:

- (1) Reasonable and customary overhead costs incurred by the Construction Observer in performing all services hereunder, including vehicle, equipment, and office rental costs; and
- (2) Reasonable and customary travel, subsistence, subcontract cost, and other direct and actual expenses incurred by the Construction Observer in performing said services and directly chargeable thereto, including costs payable to third parties which are directly attributable to the optional termination by the County of this Agreement. This shall include living and traveling expenses of employees of the Construction Observer in visiting the Projects sites, attending conferences, and making other necessary trips.

In determining the value of the work performed by the Construction Observer prior to the Optional Termination Date, no consideration shall be given to anticipated profit which the

Construction Observer would or might have made on the uncompleted portion of the work to have been performed pursuant to this Agreement.

The Construction Observer shall not receive any compensation for any work performed by the Construction Observer after the Optional Termination Date (or issuance of the written Notice of Termination from the Manager) and any work performed shall be at the sole risk and expense of the Construction Observer.

Termination of this Agreement and payment of an amount in settlement as described in this Section shall extinguish all rights, duties, obligations and liabilities of the County and of the Construction Observer under this Agreement or otherwise, except for those rights, duties, obligations and liabilities set forth in Section 20 hereof, and, except as provided in the following paragraph, this Agreement shall be of no further force and effect; however, in no event shall such termination act to release the Construction Observer from liability for any previous default either under this Agreement - or under any standard of conduct set by common law or statute.

The County's rights and options to terminate this Agreement as provided in any Section or Sections of this Agreement shall be in addition to, and not in lieu of, any and all rights and privileges otherwise available in law or equity to the County by virtue of this Agreement or otherwise. Failure of the County to exercise any of *it's* said rights, privileges, or options to terminate this Agreement as provided in any Section or Sections of this Agreement shall not be deemed a waiver of any of *it's* said rights, privileges, or options otherwise available at law or equity with respect to any continuing or subsequent breaches of this Agreement or of any other standard of conduct set by common law or statute.

In addition to the foregoing rights and options to terminate this Agreement, the County may elect to suspend all or any portion of the work of the Construction Observer hereunder, but not terminate this Agreement, by providing the Construction Observer with ten (10) days prior written notice to that effect. Thereafter, the work may be reinstated and resumed in full force and effect upon receipt from the County of ten (10) days prior written notice requesting same. The Construction Observer shall not be entitled to any damages or other compensation of any

form in the event that the County exercises its rights to suspend the work pursuant to this paragraph provided, however, that the time limits for performance set forth in Section 3 hereof shall be extended for a period of time determined by the County at its discretion to allow for said suspension of work.

8. **Delays and Damages.** The Construction Observer agrees that, except as provided in Sections 5 and 7, no claims for damages or for other compensation shall be made by the Construction Observer for any delays or hindrances occurring during the progress of any portion of the services specified in this Agreement. Relief regarding such delays or hindrances, if any, shall be provided for by an extension of time for such reasonable periods as the County may decide. It is acknowledged, however, that permitting the Construction Observer to proceed to complete any services or any part of them either after the originally specified date for completion or the date for completion as may have been subsequently extended shall in no way operate as a waiver on the part of the County of any of its rights herein.

9. **Inspection of Construction Observer's Books and Records.** Without limiting the County's audit rights under Section 5 (d) hereunder, the County, or any duly authorized representative of the County, including the Manager, may at all reasonable times inspect and examine the books and records of the Construction Observer related to the Projects for the purpose of (a) checking the reimbursable and mobilization charges, man-month/man-hour and partial man-month/man-hour calculations, and other expenses described and/or contemplated by Sections 3, 5, 6 and 8 above or (b) otherwise confirming the Construction Observer's compliance with the terms of this Agreement. The Construction Observer shall maintain said books and records and other evidence pertaining to costs, and shall make such materials available at its office during the term of this Agreement and for a period of three (3) years after the date of final payment hereunder.

10. **Ownership of Plans.** Notwithstanding any provision in this Agreement or in common law or statute to the contrary, all of the plans, tracings, estimates, specifications, computer records, discs, and tapes, proposals, sketches, diagrams, charts, calculations, correspondence, memoranda, survey notes, and other data and materials, and any part thereof,

compiled or to be compiled by or on behalf of the Construction Observer, together with all materials and data furnished to it by the County, shall at all times be and remain the property of the County and shall not be subject to any restriction or limitation on their further use by or on behalf of the County; and if at any time demand be made by the County for any of the above materials, records, and documents, whether after termination of this Agreement or otherwise, such shall be turned over to the County without delay. The County hereby grants the Construction Observer a revocable license to retain and utilize the foregoing materials, said license to terminate and expire upon the earlier to occur of (a) the completion of work described in this Agreement or (b) the termination of this Agreement, at which time the Construction Observer shall deliver to the County all such materials and documents prior to the issuance of final payment to the Construction Observer, if any. If the Construction Observer desires later to use any of the data generated or obtained by it in connection with the Projects or of any portion of the plans, it shall secure the prior written approval of the County. Notwithstanding anything contained herein to the contrary, the Construction Observer shall have the right to retain a copy of the above materials, records and documents for its archives.

If for any reason the agreement of the County and the Construction Observer set forth in this Section regarding the ownership of the plans, other work product and other materials is determined to be unenforceable, either in whole or in part, the Construction Observer hereby assigns and agrees to assign to the County all right, title and interest that Construction Observer may have or at any time acquire in said plans, other work product and other materials, without royalty, fee or other consideration of any sort, and without regard to whether this Agreement has terminated or remains in force. Notwithstanding anything contained herein to the contrary, the Construction Observer shall have no liability for the use by the County of any work product generated by the Construction Observer under this Agreement on any project other than the Projects.

11. **Personnel, Equipment and Material.** The Construction Observer shall furnish and maintain at its own expense adequate and sufficient personnel and equipment to perform the construction observation services when and as required and without delays. Adequate and sufficient personnel and equipment shall be defined as that necessary to provide a reasonable

standard of care as generally found in the industry for similar work on similar projects. All persons responsible for the construction observation services and related engineering work shall be licensed to practice professional engineering in the State of Texas.

The Construction Observer agrees that every effort shall be made to employ the same personnel and subconsultants throughout the duration of this Agreement. Any substitution or transfer of personnel shall be subject to the prior written approval of the Manager.

All employees of the Construction Observer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Construction Observer who, in the sole opinion of the Manager, is incompetent or by his work or conduct becomes detrimental to the services rendered hereunder, shall, upon request of the Manager, immediately be removed from association with work being performed for the County under this Agreement.

Except as otherwise specified, the Construction Observer shall furnish all equipment, transportation, supplies, and materials required for its operation under this Agreement.

13. **Independent Contractor.** The Construction Observer shall be deemed to be and shall operate entirely as an independent contractor in the performance of the services rendered hereunder and shall indemnify and save harmless the County, the Manager, and the Project Engineer, their respective officers, directors, employees, consultants, agents, and representatives from any claims or liabilities arising in any manner whatsoever from the Construction Observer's negligence or wrongful acts in performance of this Agreement, all as more particularly set forth in Section 19 hereof. The Construction Observer shall be responsible for obtaining, or confirming the previous granting of, all rights of entry required for the conduct of its activities under this Agreement, and for taking all appropriate steps to ensure the safety of its employees and of the public in connection with its performance of the services provided under this Agreement. Nevertheless, the applicable contractor retained by the County has primary responsibility for providing materials, means, and methods of construction, and for controlling the individual work area and safety of said areas for all parties. The Construction Observer shall



not represent itself to any party as being an agent of the County, the Manager, or the Project Engineer.

14. **Character of Employees.** In the event the work or the conduct of any person or persons engaged by the Construction Observer becomes unsatisfactory in the opinion of the County or the Manager, the Construction Observer agrees to immediately disassociate said person or persons from all work related to the Project.

15. **Subletting. Etc.** The Construction Observer shall not sublet, assign, or transfer any part of the work or obligations included in this Agreement without the written approval of the Manager, such approval to be granted or withheld at the Manager's sole discretion. Responsibility for sublet, assigned, or transferred work shall remain with the Construction Observer.

16. **Conferences.** At the request of either the County or the Manager, the Construction Observer shall provide appropriate personnel for conferences at its offices, or shall attend conferences at (a) the various offices of the County, (b) the Austin-Round Rock offices of the Manager (c) the Austin-Round Rock offices of the Project Engineer, (d) the site of the Project, or (f) any reasonably convenient location, and shall permit inspections of its services and work by the County, the Manager, or others when requested by the County.

17. **Appearance as Witness.** If requested by the County, the Construction Observer shall prepare for and appear at conferences at the offices of the County Attorney and in court with reference to any pending or proposed litigation matter which pertains to its services or which in any way involves issues or information relating to or resulting from its work hereunder. Compensation for such conferences and for trial preparation and appearance in court by the Construction Observer shall be made in accordance with the provisions of Section 5 above.

18. **Compliance with Laws.** The Construction Observer shall comply with all federal, state, and local laws, statutes, ordinances, rules, codes and regulations, and with the orders and decrees of any courts, administrative bodies, or tribunals, in any matter affecting the

performance under this Agreement, including, without limitation, workers' compensation laws, antidiscrimination laws, environmental laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, licensing laws and regulations, and all amendments and modifications to any of the foregoing, if any. When required, the Construction Observer shall furnish the County Attorney with satisfactory proof of compliance with said laws, statutes, ordinances, rules, regulations, codes, orders, and decrees.

19. **Insurance.** Prior to beginning its services, the Construction Observer shall obtain and furnish certificates to the County for the following minimum amounts of insurance:

a. **Workers' Compensation** insurance in accordance with the laws of the state of Texas, and the employer's liability coverage with limits of not less than:

\$	1,000,000	Each Accident
\$	1,000,000	Disease Policy Limit
\$	1,000,000	Disease Each Employee

b. **Commercial General Liability** insurance on a per project basis covering the Construction Observer with minimum limits of:

1986 ISO, CGL or Equivalent Limits for Bodily Injury and/or Property Damage:

\$	1,000,000	General Aggregate
\$	1,000,000	Products & Completed Operations Aggregate
\$	1,000,000	Personal and Advertising Injury
\$	1,000,000	Each Occurrence
\$	50,000	Fire Damage
\$	5,000	Medical Payments

The policy must have Endorsement CG 25-03 (Amendment-Aggregate Limits of Insurance), making the General Aggregate Limit apply separately to each job site. The Commercial General Liability Insurance policy shall provide "X," "C," and "U" coverages. Verification of such coverage must be shown in the Remarks Section of the Certificate of Insurance.

c. **Business Automobile Liability** insurance with minimum limits of \$ 1,000,000

Combined Single Limit for Bodily Injury and/or Property Damage, including Hired and Non-Ownership Liability Coverage. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with the performance of the Construction Observer's obligations under this Agreement.

d. **Umbrella Liability** with minimum limits of \$2,000,000 per occurrence and in the aggregate annually, as applicable, within the underlying policies. The Umbrella Policy shall contain the provision that it will continue in force as underlying insurance in the event of exhaustion of underlying aggregate policy limits.

e. **Valuable Papers** insurance in an amount sufficient to assure the full restoration of any plans, drawings, field notes, logs, test reports, diaries, computer disks, tapes and records, or other similar data or materials relating to the work covered by this Agreement in the event of their loss or destruction, until such time as the data and materials have been delivered to the County.

f. **General for All Insurance.** The Construction Observer shall promptly, upon receipt of Notice to Proceed, provide the Manager with certified copies of the above requirements. Certificates shall indicate the name of insured, the name of insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage. All policies are to be written through companies licensed or approved to transact that class of insurance in the State of Texas, rated with respect to the companies providing the insurance under Paragraphs a through e above, by A.M. Best Co. as "A minus X" or better. The Workers' Compensation policy shall be endorsed to reflect a waiver of subrogation in favor of the County. The Commercial General Liability and Business Automobile policies shall be endorsed to reflect a waiver of subrogation in favor of the County. The Commercial General Liability and Business Automobile policies shall name the County as an additional insured. All companies must be acceptable to the County.

Such insurance shall be maintained in full force and effect during the term of this

Agreement and until the expiration of the applicable Texas statute of limitations, or for a longer term as may be otherwise provided for hereunder. Insurance furnished under Paragraphs b and c, above, shall name the County as additional insured and shall protect the County, its officers, employees, directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful wrongful acts or failures to act by the Construction Observer, its officers, employees, directors, agents, and representatives in the performance of the services rendered under this Agreement. The certificates also shall indicate that the contractual liability assumed in Section 20, below, is included. The Construction Observer shall be responsible for any deductible stated in any policy required under this Agreement,

On all policies, the insurer shall certify that the aggregate amount shown on insurance limits is in full force and has not been diminished.

The insurance carrier shall include in each of the insurance policies required under Paragraphs a through f the following statement: "This policy shall not be canceled or materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Williamson County Attorney, 405 Martin Luther King, Georgetown, TX 78626, with a copy to the Manager at 14 Galloping Road, Round Rock, TX 78681."

**20. County Indemnified.** The Construction Observer shall indemnify and save harmless the County and its officers, directors, employees, agents, and consultants, including the Manager and the Project Engineer, from any claims, costs, or liabilities of any type or nature, and by or to any persons whomsoever, but only to the extent arising from the Construction Observer's negligent performance of the work to be accomplished under this Agreement, whether such claim or liability is based in contract, tort, or strict liability. In such event, the Construction Observer also shall indemnify and save harmless the County, its officers, directors, employees, agents, consultants, including the Consulting Engineers and the Project Engineer, from any and all expenses, including reasonable attorneys' fees, incurred by the County, the Manager and the Project Engineer in litigating or otherwise resisting said claim or liabilities.

In addition to all other rights provided in this Section, the County shall have the right to set off any amounts owed by the Construction Observer pursuant to the terms of this Agreement against any amounts owed by the County to the Construction Observer, provided, however, that the County shall provide the Construction Observer with seven (7) days prior written notice pursuant to Section 20 hereof identifying with reasonable detail and specificity the basis for the offset and the compensation item(s) in Section 5 affected thereby. The provisions of this Section shall survive the termination of this Agreement, including a termination pursuant to other Sections of this Agreement.

21. **Delivery of Notices. Etc.** All written notices, demands, and other papers or documents to be delivered to the County under this Agreement shall be delivered to the Road Bond Manager, Attn: Mike Weaver, 14 Galloping Road, Round Rock, Texas 78681, or at such other place or places as it may from time to time designate by written notice delivered to the Construction Observer. All written notices, demands, and other documents to be delivered to the Construction Observer under this Agreement shall be delivered to Doucet & Associates, Inc., Attn: Wm T. Friedrich, P.E., 5121 Bee Caves Road, Austin, Texas 78746-5216, or such other place as the Construction Observer may designate by written notice delivered to the County. All written notices, demands, and other papers or documents served upon the County, the Manager, or the Construction Observer in the aforesaid manner shall be deemed served or delivered for all purposes hereunder either (a) three (3) days following the U.S. Postal Service's postmarked date if mailed or (b) immediately upon actual delivery or refusal of delivery if transmitted by courier or overnight delivery service.

22. **Reports of Accidents. Etc.** Within twenty-four (24) hours after the occurrence of any accident or other event which (a) results in, or might result in, injury to the person or property of any person or entity, (b) results from or involves any action or failure to act by the Construction Observer or any employee, agent, or contractor of the Construction Observer, and (c) arises in any manner from the performance of this Agreement, the Construction Observer shall send a written report of such accident or other event to the County, with a copy to the Manager, setting forth a full and concise statement of the facts pertaining thereto. The

Construction Observer immediately shall send the County and the Manager a copy of any summons, subpoena, notice or other documents served upon the Construction Observer, its agents, employees, or representatives, or otherwise received by it or them, in connection with any matter which is or might come before any court, board, commission, or other tribunal, arising in any manner from the Construction Observer's performance of this Agreement.

23. **County's Acts.** Anything to be done under this Agreement by the County may be done by such persons, corporations, or firms as the County may designate, except as otherwise provided in this Agreement.

24. **Limitations.** Notwithstanding anything herein to the contrary, all covenants and obligations of the County under this Agreement shall be deemed to be valid covenants and obligations only to the extent permitted by the laws and the Constitution of the State of Texas, and no employee of the County shall have any personal obligations or liability hereunder.

25. **Captions Not a Part Hereof.** The captions and headings of the several Sections, paragraphs, and divisions of this Agreement are inserted only as a matter of convenience and for reference and in no way define limit, or describe the scope of this Agreement or the scope or content of any of its Sections, paragraphs, divisions, or other provisions.

26. **Controlling Law Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Williamson County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

27. **County.** The Construction Observer represents and warrants that it has full power, capacity, authority and legal right to execute and deliver this Agreement and to perform all obligations required of the Construction Observer set forth herein. If the Construction Observer is a corporation, it presents and warrants that it is duly organized, validly existing, in good standing, and qualified to do business under the laws of the State of Texas and the individual or individuals executing this Agreement on its behalf are fully authorized to do so

without the necessity of any additional action by its board of directors, shareholders, or any other party. If the Construction Observer is a partnership, it represents and warrants that it is duly formed and qualified to do business under the laws of the State of Texas, and the individual or individuals executing this Agreement on its behalf are fully authorized to do so without the necessity of any additional action by its partners or any other party. The Construction Observer hereby represents and warrants that the execution, delivery, and performance by the Construction Observer of this Agreement shall neither conflict with any laws, statutes, regulations, or decisions affecting the Construction Observer nor breach any contractual covenants or restrictions between the Construction Observer and any other party.

The undersigned signatory or signatories for the Construction Observer hereby represent and warrant that each signatory is a fully authorized officer, partner or representative, as applicable, of the Construction Observer and that said signatory has full and complete authority to execute this Agreement on behalf of the Construction Observer. The County shall be relying on the assurances provided in this Section in entering into this Agreement.

28. **Waiver of Default or Remedy.** Failure of the County to declare a default immediately upon its occurrence, or any delay by the County in taking any action in connection with a default, shall not constitute a waiver of the default, but the County shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement. Pursuit of any one or more of the remedies set forth herein shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law. Payment by the County to the Construction Observer following a default hereunder shall not be construed as a waiver of such default.

29. **Entire Agreement.** It is expressly agreed by the Construction Observer, as a material consideration for the execution of this Agreement, that this Agreement, with the specific references to written extrinsic documents, is the entire agreement of the parties, that there are, and were, no oral representations, warranties, understandings, stipulations, agreements, or promises pertaining to this Agreement or the expressly mentioned extrinsic documents not incorporated in writing in this Agreement. The County and the Construction Observer agree that

this Agreement may not be altered, waived, amended, or extended except by an instrument in writing signed by both the County and the Construction Observer.

30. **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement.

31. **Severability.** If any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of said provision and of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law, unless such provision or the application of such provision is, in the sole determination of the County, essential to its rights hereunder, in which event the County may terminate all or a portion of this Agreement in accordance with the provisions of Section 7 hereof.

32. **Successors.** This Agreement shall be binding upon and inure to the benefit of the County, the Construction Observer, and their respective heirs, executors, administrators, successors, and permitted assigns, including any successor agency to the County.

33. **Texas Franchise Tax Certification.** The Construction Observer hereby certifies that it is not delinquent in its Texas franchise tax payments, or, alternatively, that it is exempt from, or not subject to, such tax. A false statement concerning the Construction Observer's franchise tax status shall constitute grounds for cancellation of this Agreement, at the sole option of the County.

34. **Sales and Use Taxes.** The stated amounts of all payments to be made by the County to the Construction Observer pursuant to this Agreement are inclusive of Federal, state, or other taxes, if any, however designated, levied, or based, provided however, that the County acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code.

35. **Sole Benefit.** This Agreement is entered into for the sole benefit of the County

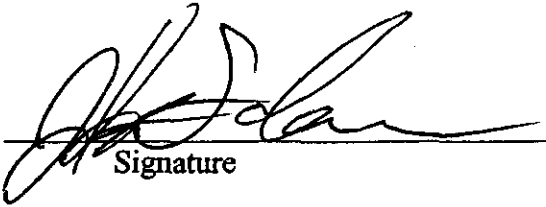


and the Construction Observer and, where permitted pursuant to this agreement, their respective successors and assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.


36. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any arbitrator or any court or other governmental or judicial County by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision. The County and the Construction Observer are of equal bargaining positions and have executed this Agreement of their own free wills after consulting with competent legal counsel, and both parties are fully informed of and familiar with its terms.

This agreement is hereby accepted and acknowledged below.

## CONSTRUCTION OBSERVER:

By:   
Signature  
Keith Schauer, P.E.  
Printed Name  
Vice President  
Title  
01/22/02  
Date

## WILLIAMSON COUNTY:

By:   
Signature  
John C. Doerfler  
Printed Name  
County Judge  
Title  
2-19-02  
Date

## LIST OF EXHIBITS

Appendix A - Services to be Provided by Construction Observer

Appendix B - Fee Schedule

## **APPENDIX A**

### **CONSTRUCTION OBSERVER SCOPE OF SERVICES**

**Doucet & Associates, Inc.**, is the "Construction Observer" referred to herein and in the Contract Documents. The Construction Observer will be responsible for observing the construction of the project including, but not limited to, inspection of work, daily reports, quantity verification, record drawings, material sampling and testing, and Contractor payments.

Descriptions of these duties are listed below:

**Required Submittals.** All required Contractor submittals would be reviewed by the Construction Observer for completeness and compliance with requirements of the Project Bid Package Specifications. The Construction Observer shall act as the coordinator for the County in obtaining and submitting to the County these documents.

The following documents to be submitted by Contractor:

- The Standard Form of Agreement.
- Worker's Compensation Insurance Certificate(s) and subsequent renewal Certificates
- Performance Bond
- Payment Bond
- Maintenance Bond
- Certificate of Insurance and subsequent renewal Certificates
- Prevailing Wage Rates for Laborer Classification and Laborer Classification Definition

**Inspection of Work.** Construction inspections should be performed at all critical stages of work. However, all stages, materials, and details of the work may be subject to inspection. The Construction Observer should meet with the Contractor to establish an understanding of the critical stages, and the Contractor should keep the Construction Observer informed of all operations so inspections can be scheduled. The Construction Observer and/or Contractor will frequently check line, grade, and dimensions of roadways and structures with survey instruments, depending on client procedures. Means and methods are the Contractor's domain, and the Construction Observer shall not dictate these in order to achieve desired results. However, where specified procedures are spelled out in the Plans and Specifications, the Construction Observer will periodically observe to see if they are being followed. If an inspection reveals that work has not been properly performed, the Contractor should be advised and the Construction Observer should request that corrective action be taken. The Contractor should inform the Construction Observer of his schedule for correcting such work and the time at which a re-inspection can be made. The Construction Observer evaluates and documents the Contractor's operations and production with respect to quality and progress.

**Daily Reports.** Keeping accurate and timely Daily Reports is a very important function of the Construction Observer. The Daily Report accounts for time, weather, material, equipment, labor, work progress, and pay quantities. Each Daily Report should be brief and at the same time be complete, clear and factual, and include all work accomplished.

The following are **typical items to be included** in the Daily Reports:

- Factors adversely affecting progress; such as, utility delays, delivery of material, availability of work force and equipment, plan changes, changed conditions, weather, and poor Contractor management.
- Unsatisfactory work performed by the Contractor and corrective actions proposed or taken.
- Situations or conditions that may require changes, extra work, or generate a claim.
- Unusual or difficult engineering, construction, or traffic problems involved and their solution.
- Safety conditions that require action with respect to the public, workers, and abutting property owners.
- When shutdown periods occur, the reasons, the dates of suspension and resumption of work must be included.
- Documentation and justification of actions taken, instructions given to the Contractor, and observations on the work performed.
- Activity that the Contractor could and should be accomplishing but is not, and the efforts made to have the Contractor improve upon his progress.
- Discussions with property owners, official visitors, and representatives of other agencies, utilities, and railroads.
- Any authorized extra work, force account work, etc. being performed by the Contractor.

The Daily Reports should include the day of the week, date of the month and year, daily weather conditions, temperature range, and hours of work for the Contractor. The reports should include who did what, where, when, and how, how much, and for how long. A listing of the Contractor's work force and equipment should be recorded daily, and idle equipment should also be recorded. Measurements taken as dimensional checks and for determination of pay quantities should be included on the Daily Report as sketches with computations shown next to the sketch. The results of field-testing are also to be shown on the Daily Report.

**Quantity Verification.** The Construction Observer shall verify and perform spot checks on quantities being identified, measured, recorded and verified by comparisons against plan, contract quantities and plan dimensions.

**Record Drawings.** The Construction Observer should maintain "Record" drawings to document the changes made to the constructed project. A centrally located complete set of full size contract drawings marked, as "Record" should be utilized. The changes should be marked with colored pencil (whatever color is required by the client). Changes should be recorded when they occur to keep the "Record" drawing set current.

**Material Testing.** In accordance with current local agency requirements and the "Quality Assurance Program" included herein, the Construction Observer should check materials delivered to the project to determine if they have been tested.

The physical tests would include, but are not limited to:

- Soil classification testing.
- Compaction, and moisture content testing for fill sections and backfill operations.
- Density, and moisture content testing for subbase stone.
- Temperature, and density testing of asphalt courses
- Temperature, consistency, air content testing and test cylinders for concrete
- Thickness, reflectivity, and temperature testing during application of pavement markings.
- Thickness, humidity, dew point and temperature during application of paint on structural steel.

The results of testing should be recorded and maintained on the project in accordance with County requirements. The tests should be identified with the test number, date of testing, at the station and elevation of the test on the appropriate plan sheet. Tests for pipe, structure, and culvert backfills should be shown on the plan and profile sheets.

When testing requirements are not met for material testing performed by the Contractor, the Construction Observer shall order the performance of independent material testing in accordance with Article XLII and the "Quality Assurance Program" included in the Contract Documents.

**Contractor Payment.** The Contractor shall submit the invoices for all work completed to the Construction Observer. The Construction Observer shall check the invoices for work done and verify quantities used. Upon verification and approval, the Construction Observer shall forward the invoices to the County and payment shall be made to the Contractor in accordance with Article VI.

**Inspections.** All work shall be subject to inspection by the Construction Observer and approval by the Project Engineer. The Construction Observer has the authority to inspect and order the performance of any tests deemed necessary. See Article XLII for material sampling and testing.

**Notices.** The Contractor shall notify the Construction Observer 24 hours prior to beginning construction. The Contractor shall notify the Construction Observer 72 hours prior to any construction on weekends or holidays. For roadway improvements involving work along existing development such as rehabilitation or resurfacing projects, the Contractor shall notify property owners 48 hours prior to any construction activity. The notices may be in the form of door hangers and shall be obtained from the County and distributed by the Contractor to all impacted or adjacent property owners as directed by the County, the Construction Observer or their designated representatives.

**APPENDIX B****FEE SCHEDULE**

<b><u>Description</u></b>	<b><u>Hourly Fee</u></b>
Principal Engineer	\$130.00
Managing Engineer	\$104.00
Manager of Planning	\$104.00
Construction Manager	\$79.00
Engineer IV	\$89.00
Engineer III	\$79.00
Engineer II	\$69.00
Technician IV	\$79.00
Technician III	\$69.00
Technician II	\$64.00
Planner IV	\$84.00
Planner III	\$74.00
Planner II	\$64.00
Drafter III	\$59.00
Drafter II	\$54.00
Executive Assistant	\$60.00
Technical Assistant III	\$55.00
Technical Assistant II	\$50.00
Technical Assistant I	\$45.00
Support Staff	\$45.00
Registered Public Land Surveyor (RPLS)	\$125.00
Surveyor-in-Training (SIT)	\$75.00
Survey Crew	\$110.00
Expert Witness (research, depositions, testimony, with a 4-hour minimum for court appearances)	\$260.00
<b>Transportation</b>	
Vehicle, per day	\$40.00 **
Vehicle, per half day	\$25.00 **
Mileage * (**)	Current IRS Rates
<b>Office &amp; Equipment</b>	
Office (including building space & associated equipment)	\$3.00 / hr
Equipment (including lap top computer, mobile phone & digital camera)	\$3.00 / hr

**Reimbursable Expenses**

Direct non-salary expenses incurred and not applicable to general overhead are billed at cost plus fifteen percent (15%) for administrative and handling charges.

Reimbursable Expenses include, but are not limited to:

Travel and lodging, including out of town transportation by D&A's vehicles at standard rates; mail, delivery, courier and express charges; legal and accounting fees (including attorneys fees charged by D&A's attorney for review or negotiation of any certificates or similar documents requested by Client or a lender doing business with Client); in-house reproduction costs (to be charged at prevailing commercial rates); external consultants (including costs for Testing Lab services); photographs; environmental fees; late fees caused by Client; charges incurred in stopping or resuming work in accordance with this Agreement; use or rental of special equipment or instruments, etc.

**Remarks**

A three (3) hour minimum charge is applicable to all trips made for the performance of change orders, or for performance of any Services after the completion of Basic Services and shall be applicable to preparation efforts required prior to coordinating and conducting inspection services 30 days prior to expiration of contractors Maintenance Bond.

All labor, equipment and transportation charges are billed on a portal-to-portal basis from our Office.

\* Mileage

\*\* When the vehicle 1 day or ½-day rates are applied, the Mileage Rate is applied to all miles exceeding 100 miles for that day.

Overtime rates will be applicable to all hours worked in excess of eight (8) per days, all hours worked outside of the hours of 6:00 am to 6:00 pm Monday through Friday, and all hours worked on weekends and holidays unless stated otherwise in the fee schedule.

Rush services are subject to a surcharge (to be negotiated).

**SCHEDULE**  
**PROFESSIONAL SERVICES TASKS - CONSTRUCTION OBSERVER**

Project Name: Pond Springs Rd at Turtle Rock Rd  
 Submitted To: \_\_\_\_\_

Job No: \_\_\_\_\_  
 XC: \_\_\_\_\_

Subject to the Master Services Agreement between *Williamson County [WC]* and *Doucet & Associates, Inc.*  
**[Construction Observer]** dated \_\_\_\_\_, **WC** hereby authorizes **Construction Observer** to perform  
 services as specified in this Scope of Tasks and in accordance with the Master Services Agreement.

**1. Scope of Work:** Construction Observer shall perform services as described below (attach additional pages as necessary). Detailed descriptions of services are provided in Appendix A. The fee type shall be "T&M" for Time and Materials, as described in the paragraphs contained in Section 5 of the Agreement for Construction Observation.

**TASKS**

**LEVEL ONE - DESIGN PHASE**

- \_\_\_ Obtain & Review Design Engineer's 30% Construction Plans
- \_\_\_ Review Site Conditions for the Project
- \_\_\_ Attend Progress Meetings Between Design Engineer & WC Bond Program Projects' Manager
- \_\_\_ Make Recommendations to Design Engr. for Design Changes, Inclusions, Corrections as Determined
- \_\_\_ Make Final Review of Design Plans and Specifications at 90% Completion
- \_\_\_ Attend PreBid Conference (if held)

**LEVEL TWO - AWARD PHASE**

- \_\_\_ Contact Apparent Low Bidder Regarding the Required Document Submittals
- \_\_\_ Review Submittals for Completeness
- \_\_\_ Discuss with Contractor the Projected Construction Start Schedule
- \_\_\_ Prepare Agenda for PreConstruction Meeting with Contractor, SubContractors & County Engineer
- \_\_\_ Prepare Draft Notice To Proceed Letter to Contractor for County Engineer
- \_\_\_ Notify All Parties Involved of PreConstruction Conference Date, Time & Location
- \_\_\_ Conduct PreConstruction Meeting Between All Parties
- \_\_\_ Prepare and Distribute Minutes of the PreConstruction Meeting with Sign-In Log of Attendees

**LEVEL THREE - CONSTRUCTION PHASE**

- \_\_\_ Review Construction Plans and Specifications
- \_\_\_ Request Public Door Hangers for Contractor's Use
- \_\_\_ Meet with Contractor at Job Site at Beginning of Workday on Construction Start Date
- \_\_\_ Discuss with the Contractor &/Or Review the Contractor's Traffic Safety Installations
- \_\_\_ Discuss the Project Sequencing with the Contractor
- \_\_\_ Obtain Additional Required Submittals Or Advise Contractor of the Requirements
- \_\_\_ Start Daily Report (To Contain the Following Information) **(Complete 1 for each Work Day)**
  - a. \_\_\_ Date, Weather Conditions, Contractor's Start Time
  - b. \_\_\_ Const. Obsvr. Name, Equipment, Mileage and Photos Log for Day
  - c. \_\_\_ Record Contractor & SubContractor Crew & Equipment on Site Information
  - d. \_\_\_ Record Additional Info. Notes and Photo Log
- \_\_\_ Typical Action Items Include: Discussions w/ Property Owners, Public Officials, other Agencies, Safety Conditions, Unusual or Difficult Engineering, Factors Adversely Affecting Work Progress, Unsatisfactory Work by Contractor, Project Shutdowns or Delays, Authorized Additional Work.
- \_\_\_ Consolidate Daily Work Reports into Weekly Reports and then into Monthly Summary Reports
- \_\_\_ Obtain & Transmit Contractor's Materials Submittals
- \_\_\_ Document Any Materials Received & Stored On Site
- \_\_\_ Materials Quality Assurance (Materials Compaction Density, Temperature, Thickness, Consistency)
- \_\_\_ Maintain Material Testing Records & Call for Additional Testing if Necessary
- \_\_\_ Receive Contractor Invoices for Work, Check for Work Done & Verify Quantities for Pay Items
- \_\_\_ Receive & Distribute "Requests for Information" (RFI) & Change Order Requests (CO) from Contractor

**LEVEL FOUR - PROJECT COMPLETION & WARRANTY PHASE**

- \_\_\_ Maintain Record "As Built" Information for Project for Submittal to County
- \_\_\_ Maintain Records & Relay to Master Document File for Project (Floppy Zip Disk, Compact Disk, InterXchange)
- \_\_\_ Prior to Expiration of Const. Warranty Period Coordinate and Conduct Inspection with County and Contractor



Revised Estimate:

January 18, 2002

**DOUCET & ASSOCIATES, INC.**  
**CONSTRUCTION OBSERVER ESTIMATE**

**POND SPRINGS ROAD PROJECT**

ITEM	RATE	QTY.	MEAS.	TOTAL
Construction Manager	\$ 79.00	86	hr	\$ 6,794.00
Overtime	\$ 79.00	11	hr	\$ 849.25
Office	\$ 3.00	28	hr	\$ 85.14
Equipment	\$ 3.00	28	hr	\$ 85.14
Transportation	\$ 40.00	11	day	\$ 430.00
Managing Engineer	\$ 104.00	28	hr	\$ 2,951.52
Transportation	\$ 40.00	4	day	\$ 141.90
<b>Cost per Month</b>				<b>\$ 11,336.95</b>
Testing Lab Service	\$ 4,000.00	1	mo	\$ 4,000.00
				<b>\$ 15,336.95</b>

<b>Months</b>	<b>1.25</b>	<b>\$ 18,171.19</b>
<b>Months</b>	<b>2</b>	<b>\$ 26,673.90</b>
Months	3	\$ 38,010.85
Months	4	\$ 49,347.80

The Tasks requested are outlined in the Construction Observer agreement and in the Project Bid Documents. A written scope and rate schedule are attached.

This represents our best estimate for hours and costs for the referenced project. The engineers' time estimate was 90 calendar days, the contractor's schedule reflects 60 calendar days and the contractor has stated that his work should be complete in 35 calendar days.

We project our Construction Manager's time to be half days for 2 months including vehicle and equipment costs. We estimate our Managing Engr's time at 1/4 of the Const. Manager for meetings and project coordination.

We have allowed for some materials testing as may be required over and above that of the Contractor. We have no reason to charge this if not used.

12/19/2001 15:21 FAX 512 280 1704

SEARCEY &amp; SEARCEY

002

ACORD CERTIFICATE OF LIABILITY INSURANCE						DATE (MM/DD/YY) 12/19/2001	
PRODUCER (512)280-5194 FAX (512)280-1704 Searcey & Searcey, Inc. 1218 Slaughter Ln. West Austin, TX 78748				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
				INSURERS AFFORDING COVERAGE			
INSURED Doucet & Associates, Inc. 5121 Bee Caves Road Suite 200 Austin, TX 78746				INSURER A: Transcontinental			
				INSURER B: Valley Forge			
				INSURER C: American Cas Co of Reading PA			
				INSURER D:			
				INSURER E:			
COVERAGES							
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY	B175093089	10/17/2001	10/17/2002	EACH OCCURRENCE	\$	1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$	100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$	10,000
	<input checked="" type="checkbox"/> Blnkt add insd				PERSONAL & ADV INJURY	\$	1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$	2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMPO AGG	\$	2,000,000
B	AUTOMOBILE LIABILITY	B117413554	12/17/2001	12/17/2002	COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$	
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$	
	<input checked="" type="checkbox"/> HIRED AUTOS						
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$	
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$	
					AUTO ONLY: AGG	\$	
A	EXCESS LIABILITY	B175093089	10/17/2001	10/17/2002	EACH OCCURRENCE	\$	1,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$	1,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$	
	<input type="checkbox"/> RETENTION \$					\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WCB117423890	12/21/2001	12/21/2002	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER		
	E.L. EACH ACCIDENT				\$	1,000,000	
	E.L. DISEASE - EA EMPLOYEE				\$	1,000,000	
	E.L. DISEASE - POLICY LIMIT				\$	1,000,000	
	OTHER						
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS Additional insured (except W.C.), Waiver of Subrogation & 30 day notice of cancellation applicable for Williamson County [ 30 day notice addressed to Williamson County Attorney @ 406 Martin Luther King, Georgetown, Tx 78626 with copy to the Manager at 14 Galloping Rd., Round Rock, Tx 78686							
CERTIFICATE HOLDER		ADDITIONAL INSURED; INSURER LETTER:		CANCELLATION			
Williamson County 405 Martin Luther King Georgetown, TX 78626				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANYONE UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.			
				AUTHORIZED REPRESENTATIVE <i>W. Searcey</i>			

ACORD 25-S (7/97)

©ACORD CORPORATION 1988

**IMPORTANT**

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

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

**DISCLAIMER**

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

Form **W-9**  
(Rev. December 1996)  
Department of the Treasury  
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do NOT  
send to the IRS.

Please print or type

Name (If a joint account or you changed your name, see Specific Instructions on page 2.)

Doucet and Associates, Inc.

Business name, if different from above. (See Specific Instructions on page 2.)

Check appropriate box:

☐

Individual/Sole proprietor

☒

Corporation

☐

Partnership

☐

Other ▶

Address (number, street, and apt. or suite no.)

5121 Bee Caves Road #201

Requester's name and address (optional)

City, state, and ZIP code

Austin, Texas 78746

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, if you are a resident alien OR a sole proprietor, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number

| | + | + | | |

OR

Employer identification number

74-2613811-50

List account number(s) here (optional)

## Part II For Payees Exempt From Backup Withholding (See the instructions on page 2.)

## Part III Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

**Certification Instructions.**—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign  
Here

Signature

Michael Jones

Date

7/11/01

**Purpose of Form.**—A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are an exempt payee.

**Note:** If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**What Is Backup Withholding?**—Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding

include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
- You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or

- You do not certify your TIN when required. See the Part III instructions on page 2 for details.

Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate Instructions for the Requester of Form W-9.

## Penalties

**Failure To Furnish TIN.**—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding.**—If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal Penalty for Falsifying Information.**—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.**—If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

**AGENDA ITEM 22**

Consider approving the Agreement for construction observation engineering services with Haliburton KBR.

Moved: Commissioner Hays

Seconded: Commissioner Heiligenstein

Motion: To approve an agreement for construction observation engineering services with Haliburton KBR (formerly Brown & Root, Inc.).

Vote: 4 - 0

< Attachment >

Contract No. Haliburton KBR - Construction Observation

**Checklist**

**Prior to Initiation of Work**

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

**Course of Work**

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

**Notices (as applicable)**

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

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

**Documentation for Payment**

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

**WILLIAMSON COUNTY, TEXAS**  
**AGREEMENT FOR CONSTRUCTION OBSERVATION**  
**ENGINEERING SERVICES**  
**FOR THE**  
**2000 Williamson County Road Bond Program**

**THIS AGREEMENT**, made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **WILLIAMSON COUNTY**, hereinafter referred to as the "County" and Kellogg Brown & Root, Inc., a Delaware corporation, hereinafter referred to as the "Construction Observer."

**WITNESSETH:**

**WHEREAS**, the County proposes to construct the 2000 Williamson County Road Bond Program hereinafter referred to as the "Project"; and

**WHEREAS**, the County, having retained the firm of Prime Strategies, Inc., as the Road Bond Program Manager, hereinafter referred to as the "Manager", to represent and assist the County in the planning, design, review, and coordination of the design and construction phases of the Project, and;

**WHEREAS**, the County has retained consulting engineering firms hereinafter called the "Project Engineer", to represent and assist the County in the design, review, and coordination of the design and construction phases of the Project; and

**WHEREAS**, the Project Engineer has prepared the construction plans and specifications for the Project; and

**WHEREAS**, the Construction Observer has or will retain one or more professional quality assurance engineering firms (collectively, the "Testing Engineer"), as necessary, to provide supplemental professional quality assurance engineering services to those performed by the Contractor, including, but not limited to, sampling, analyzing, and testing of construction

materials, performing on-site inspections and testing of construction materials, performing fabrication plant inspections and testing of construction materials, performing concrete and asphalt batch plant sampling, testing, inspection, monitoring, and reporting, and writing and issuing reports of all tests, observations, readings, and analyses conducted; and

**WHEREAS**, the County and the Construction Observer mutually desire to enter into an agreement for the performance by the Construction Observer of complete and comprehensive construction observation services, as described in the Scope of Services (as hereinafter defined) and otherwise in this Agreement, and other services incidental to and required for the construction of the Project;

**NOW, THEREFORE**, in consideration of payments hereinafter stipulated to be made to the Construction Observer by the County, the parties do hereby agree as follows:

1. **General.** All services rendered to the County by the Construction Observer under this Agreement shall be performed under the overall direction and instruction of the County and subject to the oversight, monitoring, and reporting of the Manager, all in accordance with accepted professional construction management standards.

2. **Scope of Services.** The services to be provided to the County under this Agreement shall consist of the furnishing of professional services and expertise for the inspection of construction operations on the Project. The services furnished hereunder shall be of professional quality or generally accepted level of care, and shall be complete in all respects regarding the responsibilities described in Work Authorizations issued under this Agreement, and shall comply fully with the terms of this Agreement. All such services shall be subject to the approval of the County, represented by the County Judge or subsequently designated official. A detailed description of the work to be performed is set forth in the Scope of Services contained in Appendix A attached hereto and made a part of this Agreement.

It is understood and agreed that the Construction Observer shall provide sufficient qualified staffing to perform the tasks described in the scope of services in accordance with the



construction schedule. It is further agreed that if additional staff is required to adequately manage the construction activities, the Construction Observer shall be required to furnish the additional staff as authorized and directed by the Manager. All staff employed by the Construction Observer shall have the qualifications and experience, deemed appropriate and adequate by the Manager, necessary to ensure construction of the Project in full conformance with the plans, specifications, and standards issued for the Project.

3. **Time Limits and Time for Performance.** The Construction Observer shall not proceed with the work outlined under Section 2 until authorized by the County or Manager to proceed as provided under Section 6. This contract shall extend for a period not more than forty-eight (48) months unless extended by written supplemental agreement duly executed by the Construction Observer and the County.

The Construction Observer agrees to begin the performance of the services designated herein as directed in the Notice to Proceed and as necessary to coincide with the project construction schedule. It is the County's intent to issue such Notice to allow approximately ten (10) business days prior to beginning services. The Construction Observer shall furnish all services in such manner and at such times as the development schedules of the Projects require so that no delay in the progression of the construction of the Projects will be caused by or be in any way attributable to the Construction Observer. The requirements contained in this paragraph regarding the commencement, performance, and completion of services under this Agreement constitute the time limits for the Construction Observer's services hereunder.

In the event that, by reason or causes beyond the control of the Construction Observer and its agents, representatives, employees, or subcontractors, the services described herein are stopped, suspended, or delayed, the time limits and the time for performance referenced above shall be extended for a period or periods of time as determined by the County, at its discretion, to allow for said stoppage, suspension, or delay.

Should the Construction Observer at any time, in the opinion of the County, not carry out its obligations under this Agreement, or not be progressing toward completion of the services to

be rendered hereunder in an expeditious manner, or if the Construction Observer shall fall short in any manner to discharge any other of its obligations under this Agreement, the County shall issue to the Construction Observer written notification of the deficiency and request that the Construction Observer cure the deficiency within ten (10) working days after receipt by the Construction Observer of the written notification from the County (cure period). If the Construction Observer has failed to cure the deficiency within the cure period, the Construction Observer shall be considered to be in default and the County may, having provided the Construction Observer with the previously-described ten (10) day cure period, terminate this Agreement effective on a date following said ten (10) working day cure period (the "Termination Date").

If the County shall terminate this Agreement as provided either in this Section, or Section 7, no fees of any type, other than fees due and payable at the time of termination for work performed and acceptable to the County, shall thereafter be paid to the Construction Observer.

If it is necessary for the County to retain one or more substitute firms to complete and/or correct work to be performed by the Construction Observer under this Agreement, the County may postpone all payments due the Construction Observer hereunder until said work is complete so as to permit the County to make a final determination of additional costs, if any, incurred by the County as a result of the Construction Observers default, said additional costs to be deducted from and set off against any outstanding balance of fees due the Construction Observer.

4. **Consequences of Failure to Properly Manage Staff and/or Complete the Services on Time.** The construction inspection services to be provided by the Construction Observer constitute an essential part of the construction process required to complete the Projects. Further, the Construction Observer acknowledges that the time limits and the specified time for performance set forth in Section 3 constitute essential benefits to the County and essential elements of this Agreement.

Any election by the County to waive remedies shall in no way limit or impair the ability of the County (a) to exercise any and all available remedies in the event of any subsequent

default or defaults by the Construction Observer or (b) to otherwise insist upon the Construction Observer's performance under this Agreement in strict accordance with its terms.

In exercising its judgement, the County shall specify in detail and in writing the Construction Observer's failure to perform and shall give the Construction Observer ten (10) business days, as described in Section 3, to cure the default.

If the Construction Observer fails to complete any of said services within the time limits fixed by this Agreement, and if the County shall, nevertheless, permit the Construction Observer to continue and complete same, such permission shall neither modify nor waive any liability of the Construction Observer for damages arising from noncompletion of said services within the applicable time limits, but all such liabilities shall continue in full force against the Construction Observer.

5. **Compensation.**

a. The maximum amount payable under this contract without modification (the "Compensation Cap") is \$2,000,000.00, provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. All payments shall be made in accordance with the rate schedule contained in Appendix B up to the limitation on Construction Observer's fee established in each Work Authorization. The authorized costs that are reimbursable are those costs attributable to the specific work authorized in a Work Authorization.

If, through no fault of the Construction Observer, the construction progress require more time than specified in each Work Authorization, the Construction Observer shall inform the Manager, in writing, regarding the increase, prior to performing any additional services, and shall submit a proposal to amend the Work Authorization. Upon written approval, this amendment shall then become the new maximum total compensation and reimbursement due the Construction Observer.

No additional reimbursement or compensation shall be granted without written authorization by the Manager and approval by the County Judge and/or Commissioners Court.

The funding limit set forth in each Work Authorization shall constitute full payment for all services, liaison, products, materials, and equipment required to deliver the professional construction management services detailed in the Scope of Services (Appendix A) including travel, overhead, and expenses. No other compensation will be requested or paid, nor shall the amounts set forth on Appendix B or the funding limit of the Work Authorization be adjusted, except as provided for above.

b. The Construction Observer shall submit monthly to the County one (1) copy of its pay estimate request in the form provided by the County which shall indicate in sufficient detail the work completed through the date thereof and the amount due for such work. Said pay request also shall include all amounts which are reimbursable to the Construction Observer under this Agreement, fully documented and supported by invoices, receipts and other materials reasonably acceptable to the County. The pay estimate requests shall specify the man-months or man-hours (as applicable), position rates, and total price for the services provided by the Construction Observer. Every Work Authorization will be invoiced separately from other Work Authorizations open during the month.

c. The County or Manager shall review the pay estimate request submitted by the Construction Observer within ten (10) working days of receipt and request clarification or additional support for the pay estimate within the ten (10) day review period. If no clarification or additional support is requested, the pay estimate shall be deemed acceptable and payment shall be made within thirty (30) calendar days after it was received by the County. If clarification or additional support is requested, the pay estimate shall be processed and payment made within thirty (30) calendar days after clarifications or additional support is received and deemed acceptable by the County.

d. No payment by the County shall relieve the Construction Observer of its obligation to deliver timely the construction inspection services required under this Agreement.

e. The County shall have the right at any time to audit all payments previously made to the Construction Observer and/or currently subject to a pay estimate request delivered by the Construction Observer to the County, together with all supporting information related thereto. The purpose of such audit shall be to confirm (i) the accuracy of information submitted by the Construction Observer including, reimbursable and mobilization charges, man-month/man-hour and partial man-month/man-hour calculations, etc.) and (ii) the compliance of all payment calculations with the terms of this Agreement. Any audit performed pursuant to this Section shall be accomplished at the sole expense of the County, unless said audit discloses material overcharges by the Construction Observer, in which case, without limiting any other rights or remedies available to the County, the Construction Observer promptly shall reimburse the County for all costs resulting from said audit. The Construction Observer shall cooperate promptly and fully with the County, its agents and representatives, in connection with any audit.

f. Extra Work. It is acknowledged and agreed that the payment of the compensation set forth in the Work Authorizations and in accordance with Appendix B shall constitute full and complete payment for all services to be performed by the Construction Observer under this Agreement and as set forth in the Scope of Services, Appendix A of this Agreement unless otherwise modified by supplemental agreement. No additional payment will be made for any changes or additions unless it is clearly demonstrated that the work is beyond the scope of the Work Authorization. The Scope of Services set forth in Appendix A and labor categories listed in Appendix B to this Agreement may be modified with a written amendment to the Agreement executed by both parties.

In the event, for reasons beyond the control of the Construction Observer, the Construction Observer is directed by the County (a) to make changes to work already satisfactorily performed and accepted by the County or (b) to perform additional work not currently provided hereunder and being of such magnitude that it is clearly beyond the scope of this Agreement, and the changes and/or additional work are so recognized by the County, or (c)

to provide additional staff in excess of that shown in the estimate for the Work Authorization, such changes and/or additional work shall be considered Extra Work. The County reserves the right of final decision regarding whether any additional work constitutes Extra Work, said decision to be made in its reasonable discretion. No compensation shall be made for revisions, changes, or additional work required due in any way to the *negligent* error, omission, or fault of the Construction Observer, its agents, representatives, employees or contractors.

Compensation for such Extra Work shall be allowed when approved in advance and authorized by the Manager and County Judge, the terms of such compensation shall be as set forth in negotiated supplemental Work Authorizations to which sum all approved and actual out-of-pocket expenses and subcontract costs, if any, shall be added. Salary costs will be defined as direct labor cost plus salary-related costs, including allowance for holidays, sick leave, vacation, employees' group insurance, workers' compensation, social security, unemployment and disability taxes, and miscellaneous employee benefits. Time spent by a principal of the Construction Observer, performing services or functions (a) capable of being carried out by other, subordinate personnel with a lower standard hourly rate and (b) payable by the County, shall be billed at a rate equivalent to that of the applicable qualified subordinate personnel. Time spent by a principal of the Construction Observer in an administrative or supervisory capacity shall not be compensable. Documentation in the form of audited salary-related costs as a percentage of salary costs shall be submitted to the County, together with such other records and documentation as the County may require, to compute accurate compensation for Extra Work. Payments shall be made on the basis of certified time and expense records and audited documentation of salary-related costs.

The Construction Observer shall assign the employees (including its principals), as selected and requested by the Manager, to provide expert engineering services related to legal proceedings, court actions, and settlement negotiations, including services such as engineering research related to impending legal actions, preparation of trial exhibits, serving as expert witnesses, and appearances in court as a non-testifying advisor to the County Attorney, and to the Manager. Compensation to the Construction Observer for such services shall be negotiated as Extra Work under the provisions of this Section and under Section 16 hereof, with the terms

having been agreed upon prior to providing of such services.

6. **Work Authorizations**

The County or Manager will prepare and issue Work Authorizations, in the form identified and attached hereto as Appendix C to authorize the Construction Observer to perform one or more work 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 the Construction Observer. 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 Construction Observer's responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.

Upon satisfactory completion of the Work Authorization, the Construction Observer shall submit the deliverables as specified in the executed Work Authorization to the County or Manager for review and acceptance.

Unless otherwise authorized by each individual work authorization, work included in a Work Authorization shall not begin until the County and the Construction Observer have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization. The Construction Observer shall promptly notify the County or Manager of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Construction Observer 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. The Construction Observer shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a Supplemental Work Authorization. The County shall not be responsible for actions by the Construction Observer or any costs incurred by the Construction Observer relating to additional work not directly associated with the performance of the Work Authorization.

7. **Source of Fee Payments and the County's Right to Cancel Prior to Notice to Proceed.**

The County has financed the design of the Projects by issuance and sale of General Obligations Bonds, as authorized by the voters in Williamson County in the election held in November, 2000, hereinafter referred to as the "Bonds". It is expressly acknowledged that all payments due for the services under this Agreement shall be made solely from the proceeds of the Bonds. Payment for construction inspection services shall conform with the terms pertaining to the issuance of the Bonds. The County shall have no liability under this Agreement or otherwise to make payments to the Construction Observer from any other sources. In addition, the County reserves the right, at its sole discretion, at any time prior to the issuance of the written "Notice To Proceed" described in Section 3 above, to cancel or terminate this Agreement; and, in the event of such cancellation or termination, the Construction Observer shall not be entitled to any payment, nor have any claim for compensation or damages, resulting from such cancellation or termination.

Notwithstanding the preparation or execution of this Agreement, the County is under no obligation to issue the written "Notice to Proceed". Any work undertaken or expenses incurred by the Construction Observer prior to the issuance of the written "Notice to Proceed" shall be at the sole risk and expense of the Construction Observer. After issuance of the written "Notice to Proceed", the Construction Observer promptly shall begin work pursuant to the provisions of this Agreement and shall continuously prosecute same with such diligence as will enable the Construction Observer to comply with this Agreement.

Issuance of the Notice to Proceed by the County will constitute certification that sufficient funds are available and obligated to pay up to the full amount set forth in the Work Authorization.

8. **County's Option to Terminate; Suspension of Work.** In addition to the rights and options to terminate given in Sections 3, 4, and this section, the County has the right to immediately terminate this Agreement or any Work Authorization hereunder at its sole option at any time, and with or without cause, by issuance of a written Notice of Termination from the



Manager, and to make settlement with the Construction Observer upon an equitable basis as determined by the County, which settlement shall fix the value of the work performed by the Construction Observer prior to the termination date (the "Optional Termination Date") in the manner set forth below. In determining the value of the work performed, the County shall consider the following:

a. The ratio of the amount of work satisfactorily performed by the Construction Observer prior to the Optional Termination Date to the total amount of work contemplated to be undertaken by the Construction Observer as set forth in every active Work Authorization under this Agreement.

b. The amount of the direct expense incurred by the Construction Observer for work performed prior to the Optional Termination Date in proportion to the amount of the total direct expense which the Construction Observer would have incurred had it been allowed to complete the work contemplated by the Work Authorizations.

Direct expense shall be the sum of the following items of expense actually incurred by the Construction Observer:

- (1) Reasonable and customary overhead costs incurred by the Construction Observer in performing all services hereunder, including vehicle, equipment, and office rental costs; and
- (2) Reasonable and customary travel, subsistence, subcontract cost, and other direct and actual expenses incurred by the Construction Observer in performing said services and directly chargeable thereto, including costs payable to third parties which are directly attributable to the optional termination by the County of this Agreement. This shall include living and traveling expenses of employees of the Construction Observer in visiting the Projects sites, attending conferences, and making other necessary trips.

In determining the value of the work performed by the Construction Observer prior to the

Optional Termination Date, no consideration shall be given to anticipated profit which the Construction Observer would or might have made on the uncompleted portion of the work to have been performed pursuant to this Agreement.

The Construction Observer shall not receive any compensation for any work performed by the Construction Observer after the Optional Termination Date (or issuance of the written Notice of Termination from the Manager) and any work performed shall be at the sole risk and expense of the Construction Observer.

Termination of this Agreement and payment of an amount in settlement as described in this Section shall extinguish all rights, duties, obligations and liabilities of the County and of the Construction Observer under this Agreement or otherwise, except for those rights, duties, obligations and liabilities set forth in Section 20 hereof, and, except as provided in the following paragraph, this Agreement shall be of no further force and effect; however, in no event shall such termination act to release the Construction Observer from liability for any previous default either under this Agreement - or under any standard of conduct set by common law or statute.

The County's rights and options to terminate this Agreement as provided in any Section or Sections of this Agreement shall be in addition to, and not in lieu of, any and all rights and privileges otherwise available in law or equity to the County by virtue of this Agreement or otherwise. Failure of the County to exercise any of *its* said rights, privileges, or options to terminate this Agreement as provided in any Section or Sections of this Agreement shall not be deemed a waiver of any of *its* said rights, privileges, or options otherwise available at law or equity with respect to any continuing or subsequent breaches of this Agreement or of any other standard of conduct set by common law or statute.

In addition to the foregoing rights and options to terminate this Agreement, the County may elect to suspend all or any portion of the work of the Construction Observer hereunder, but not terminate this Agreement, by providing the Construction Observer with ten (10) days prior written notice to that effect. Thereafter, the work may be reinstated and resumed in full force and effect upon receipt from the County of ten (10) days prior written notice requesting it. The

Construction Observer shall not be entitled to any damages or other compensation of any form in the event that the County exercises its rights to suspend the work pursuant to this paragraph provided, however, that the time limits for performance set forth in Section 3 hereof shall be extended for a period of time determined by the County at its discretion to allow for said suspension of work.

9. **Delays and Damages.** The Construction Observer agrees that, except as provided in Sections 5 and 7, no claims for damages or for other compensation shall be made by the Construction Observer for any delays or hindrances occurring during the progress of any portion of the services specified in this Agreement. Relief regarding such delays or hindrances, if any, shall be provided for by an extension of time for such reasonable periods as the County may decide. It is acknowledged, however, that permitting the Construction Observer to proceed to complete any services or any part of them either after the originally specified date for completion or the date for completion as may have been subsequently extended shall in no way operate as a waiver on the part of the County of any of its rights herein.

10. **Inspection of Construction Observer's Books and Records.** Without limiting the County's audit rights under Section 5 (d) hereunder, the County, or any duly authorized representative of the County, including the Manager, may at all reasonable times inspect and examine the books and records of the Construction Observer related to the Projects for the purpose of (a) checking the reimbursable and mobilization charges, man-month/man-hour and partial man-month/man-hour calculations, and other expenses described and/or contemplated by Sections 3, 5, 6 and 8 above or (b) otherwise confirming the Construction Observer's compliance with the terms of this Agreement. The Construction Observer shall maintain said books and records and other evidence pertaining to costs, and shall make such materials available at its office during the term of this Agreement and for a period of three (3) years after the date of final payment hereunder.

11. **Ownership of Plans.** Notwithstanding any provision in this Agreement or in common law or statute to the contrary, all of the plans, tracings, estimates, specifications, computer records, discs, and tapes, proposals, sketches, diagrams, charts, calculations,

correspondence, memoranda, survey notes, and other data and materials, and any part thereof, compiled or to be compiled by or on behalf of the Construction Observer, together with all materials and data furnished to it by the County, shall at all times be and remain the property of the County and shall not be subject to any restriction or limitation on their further use by or on behalf of the County; and if at any time demand be made by the County for any of the above materials, records, and documents, whether after termination of this Agreement or otherwise, such shall be turned over to the County without delay. The County hereby grants the Construction Observer a revocable license to retain and utilize the foregoing materials, said license to terminate and expire upon the earlier to occur of (a) the completion of work described in this Agreement or (b) the termination of this Agreement, at which time the Construction Observer shall deliver to the County all such materials and documents prior to the issuance of final payment to the Construction Observer, if any. If the Construction Observer desires later to use any of the data generated or obtained by it in connection with the Projects or of any portion of the plans, it shall secure the prior written approval of the County. Notwithstanding anything contained herein to the contrary, the Construction Observer shall have the right to retain a copy of the above materials, records and documents for its archives.

If for any reason the agreement of the County and the Construction Observer set forth in this Section regarding the ownership of the plans, other work product and other materials is determined to be unenforceable, either in whole or in part, the Construction Observer hereby assigns and agrees to assign to the County all right, title and interest that Construction Observer may have or at any time acquire in said plans, other work product and other materials, without royalty, fee or other consideration of any sort, and without regard to whether this Agreement has terminated or remains in force. Notwithstanding anything contained herein to the contrary, the Construction Observer shall have no liability for the use by the County of any work product generated by the Construction Observer under this Agreement on any project other than the Projects.

12. **Personnel, Equipment and Material.** The Construction Observer shall furnish and maintain at its own expense adequate and sufficient personnel and equipment to perform the construction observation services when and as required and without delays. Adequate and

sufficient personnel and equipment shall be defined as that necessary to provide a reasonable standard of care as generally found in the industry for similar work on similar projects. All persons responsible for the construction observation services and related engineering work shall be licensed to practice professional engineering in the State of Texas.

The Construction Observer agrees that every effort shall be made to employ the same personnel and subconsultants throughout the duration of this Agreement. Any substitution or transfer of personnel shall be subject to the prior written approval of the Manager.

All employees of the Construction Observer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Construction Observer who, in the sole opinion of the Manager, is incompetent or by his work or conduct becomes detrimental to the services rendered hereunder, shall, upon request of the Manager, immediately be removed from association with work being performed for the County under this Agreement.

Except as otherwise specified, the Construction Observer shall furnish all equipment, transportation, supplies, and materials required for its operation under this Agreement.

13. **Safety.** The Construction Observer 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 Construction Observer shall not be relieved from its obligation to notify the County of any such act, omission or failure on the part of the construction contractor identified by the Construction Observer.

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 Construction Observer and name the Construction Observer 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 Manager, the Project Engineer, and the Construction Observer.

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

14. **Independent Contractor.** The Construction Observer shall be deemed to be and shall operate entirely as an independent contractor in the performance of the services rendered hereunder and shall indemnify and save harmless the County, the Manager, and the Project Engineer, their respective officers, directors, employees, consultants, agents, and representatives from any claims or liabilities arising in any manner whatsoever from the Construction Observer's negligence or wrongful acts in performance of this Agreement, all as more particularly set forth in Section 19 hereof. The Construction Observer shall not represent itself to any party as being an agent of the County, the Manager, or the Project Engineer.

15. **Character of Employees.** In the event the work or the conduct of any person or persons engaged by the Construction Observer becomes unsatisfactory in the opinion of the County or the Manager, the Construction Observer agrees to immediately disassociate said person or persons from all work related to the Project.

16. **Subletting. Etc.** The Construction Observer shall not sublet, assign, or transfer any part of the work or obligations included in this Agreement without the written approval of the Manager, such approval to be granted or withheld at the Manager's sole discretion.

Responsibility for sublet, assigned, or transferred work shall remain with the Construction Observer.

17. **Conferences.** At the request of either the County or the Manager, the Construction Observer shall provide appropriate personnel for conferences at its offices, or shall attend conferences at (a) the various offices of the County, (b) the Austin-Round Rock offices of the Manager (c) the Austin-Round Rock offices of the Project Engineer, (d) the site of the Project, or (e) any reasonably convenient location, and shall permit inspections of its services and work by the County, the Manager, or others when requested by the County.

18. **Appearance as Witness.** If requested by the County, the Construction Observer shall prepare for and appear at conferences at the offices of the County Attorney and in court with reference to any pending or proposed litigation matter which pertains to its services or which in any way involves issues or information relating to or resulting from its work hereunder. Compensation for such conferences and for trial preparation and appearance in court by the Construction Observer shall be made in accordance with the provisions of Section 5 above.

19. **Compliance with Laws.** The Construction Observer shall comply with all federal, state, and local laws, statutes, ordinances, rules, codes and regulations, and with the orders and decrees of any courts, administrative bodies, or tribunals, in any matter affecting the performance under this Agreement, including, without limitation, workers' compensation laws, antidiscrimination laws, environmental laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, licensing laws and regulations, and all amendments and modifications to any of the foregoing, if any. When required, the Construction Observer shall furnish the County Attorney with satisfactory proof of compliance with said laws, statutes, ordinances, rules, regulations, codes, orders, and decrees.

20. **Insurance.** Prior to beginning its services, the Construction Observer shall obtain and furnish certificates to the County for the following minimum amounts of insurance:

- a. **Workers' Compensation** insurance in accordance with the laws of the

state of Texas, and the employer's liability coverage with limits of not less than:

\$	1,000,000	Each Accident
\$	1,000,000	Disease Policy Limit
\$	1,000,000	Disease Each Employee

b. **Commercial General Liability** insurance on a per project basis covering the Construction Observer with minimum limits of:

1986 ISO, CGL or Equivalent Limits for Bodily Injury and/or Property Damage:

\$	1,000,000	General Aggregate
\$	1,000,000	Products & Completed Operations Aggregate
\$	1,000,000	Personal and Advertising Injury
\$	1,000,000	Each Occurrence
\$	50,000	Fire Damage
\$	5,000	Medical Payments

The policy must have Endorsement CG 25-03 (Amendment-Aggregate Limits of Insurance), making the General Aggregate Limit apply separately to each job site. The Commercial General Liability Insurance policy shall provide "X," "C," and "U" coverage. Verification of such coverage must be shown in the Remarks Section of the Certificate of Insurance.

c. **Business Automobile Liability** insurance with minimum limits of \$ 1,000,000 Combined Single Limit for Bodily Injury and/or Property Damage, including Hired and Non-Ownership Liability Coverage. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with the performance of the Construction Observer's obligations under this Agreement.

d. **Umbrella Liability** with minimum limits of \$2,000,000 per occurrence and in the aggregate annually, as applicable, within the underlying policies. The Umbrella Policy shall



contain the provision that it will continue in force as underlying insurance in the event of exhaustion of underlying aggregate policy limits.

e. **Valuable Papers** insurance in an amount sufficient to assure the full restoration of any plans, drawings, field notes, logs, test reports, diaries, computer disks, tapes and records, or other similar data or materials relating to the work covered by this Agreement in the event of their loss or destruction, until such time as the data and materials have been delivered to the County.

f. **General for All Insurance.** The Construction Observer shall promptly, within 10 working days of complete execution of the Agreement, provide the Manager with certified copies of the above requirements. Certificates shall indicate the name of insured, the name of insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage. All policies are to be written through companies licensed or approved to transact that class of insurance in the State of Texas, rated with respect to the companies providing the insurance under Paragraphs a through e above, by A.M. Best Co. as "A minus X" or better. The Workers' Compensation policy shall be endorsed to reflect a waiver of subrogation in favor of the County to the extent necessary to provide coverage under Construction Observer insurance for the insured liabilities assumed by Construction Observer under the indemnity provision herein. The Commercial General Liability and Business Automobile policies shall be endorsed to reflect a waiver of subrogation in favor of the County. The Commercial General Liability and Business Automobile policies shall name the County as an additional insured for the insured liabilities assumed by Construction Observer under the indemnity provision herein. All companies must be acceptable to the County.

Such insurance shall be maintained in full force and effect during the term of this Agreement and until the expiration of the applicable Texas statute of limitations, or for a longer term as may be otherwise provided for hereunder. Insurance furnished under Paragraphs b and c, above, shall name the County as additional insured and shall protect the County, its officers, employees, directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful wrongful

acts or failures to act by the Construction Observer, its officers, employees, directors, agents, and representatives in the performance of the services rendered under this Agreement. The certificates also shall indicate that the contractual liability assumed in Section 20, below, is included. The Construction Observer shall be responsible for any deductible stated in any policy required under this Agreement.

On all policies, the insurer shall certify that the aggregate amount shown on insurance limits is in full force and has not been diminished.

The insurance carrier shall include in each of the insurance policies required under Paragraphs a through f the following statement: "This policy shall not be canceled or materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Williamson County Attorney, 405 Martin Luther King, Georgetown, TX 78626, with a copy to the Manager at 14 Galloping Road, Round Rock, TX 78681."

21. **County Indemnified.** The Construction Observer shall indemnify and save harmless the County and its officers, directors, employees, agents, and consultants, including the Manager and the Project Engineer, from any claims, costs, or liabilities of any type or nature, and by or to any persons whomsoever, but only to the extent arising from the Construction Observer's negligent performance of the work to be accomplished under this Agreement, whether such claim or liability is based in contract, tort, or strict liability. In such event, the Construction Observer also shall indemnify and save harmless the County, its officers, directors, employees, agents, consultants, including the Consulting Engineers and the Project Engineer, from any and all expenses, including reasonable attorneys' fees, incurred by the County, the Manager and the Project Engineer in litigating or otherwise resisting said claim or liabilities

In addition to all other rights provided in this Section, the County shall have the right to set off any amounts owed by the Construction Observer pursuant to the terms of this Agreement against any amounts owed by the County to the Construction Observer, provided, however, that the County shall provide the Construction Observer with seven (7) days prior written notice

pursuant to Section 20 hereof identifying with reasonable detail and specificity the basis for the offset and the compensation item(s) in Section 5 affected thereby. The provisions of this Section shall survive the termination of this Agreement, including a termination pursuant to other Sections of this Agreement.

22. **Delivery of Notices. Etc.** All written notices, demands, and other papers or documents to be delivered to the County under this Agreement shall be delivered to the Road Bond Manager, Attn: Mike Weaver, 14 Galloping Road, Round Rock, Texas 78681, or at such other place or places as it may from time to time designate by written notice delivered to the Construction Observer. All written notices, demands, and other documents to be delivered to the Construction Observer under this Agreement shall be delivered to 505 East Huntland Drive, Suite 220; Austin, Texas 78752, or such other place as the Construction Observer may designate by written notice delivered to the County. All written notices, demands, and other papers or documents served upon the County, the Manager, or the Construction Observer in the aforesaid manner shall be deemed served or delivered for all purposes hereunder either (a) three (3) days following the U.S. Postal Service's postmarked date if mailed or (b) immediately upon actual delivery or refusal of delivery if transmitted by courier or overnight delivery service.

23. **Reports of Accidents. Etc.** Within twenty-four (24) hours after the occurrence of any accident or other event which (a) results in, or might result in, injury to the person or property of any person or entity, (b) results from or involves any action or failure to act by the Construction Observer or any employee, agent, or contractor of the Construction Observer, and (c) arises in any manner from the performance of this Agreement, the Construction Observer shall send a written report of such accident or other event to the County, with a copy to the Manager, setting forth a full and concise statement of the facts pertaining thereto. The Construction Observer immediately shall send the County and the Manager a copy of any summons, subpoena, notice or other documents served upon the Construction Observer, its agents, employees, or representatives, or otherwise received by it or them, in connection with any matter which is or might come before any court, board, commission, or other tribunal, arising in any manner from the Construction Observer's performance of this Agreement.

24. **County's Acts.** Anything to be done under this Agreement by the County may be done by such persons, corporations, or firms as the County may designate, except as otherwise provided in this Agreement.

25. **Limitations.** Notwithstanding anything herein to the contrary, all covenants and obligations of the County under this Agreement shall be deemed to be valid covenants and obligations only to the extent permitted by the laws and the Constitution of the State of Texas, and no employee of the County shall have any personal obligations or liability hereunder.

26. **Captions Not a Part Hereof.** The captions and headings of the several Sections, paragraphs, and divisions of this Agreement are inserted only as a matter of convenience and for reference and in no way define limit, or describe the scope of this Agreement or the scope or content of any of its Sections, paragraphs, divisions, or other provisions.

27. **Controlling Law Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Williamson County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

28. **County.** The Construction Observer represents and warrants that it has full power, capacity, authority and legal right to execute and deliver this Agreement and to perform all obligations required of the Construction Observer set forth herein. If the Construction Observer is a corporation, it presents and warrants that it is duly organized, validly existing, in good standing, and qualified to do business under the laws of the State of Texas and the individual or individuals executing this Agreement on its behalf are fully authorized to do so without the necessity of any additional action by its board of directors, shareholders, or any other party. If the Construction Observer is a partnership, it represents and warrants that it is duly formed and qualified to do business under the laws of the State of Texas, and the individual or individuals executing this Agreement on its behalf are fully authorized to do so without the necessity of any additional action by its partners or any other party. The Construction Observer hereby represents and warrants that the execution, delivery, and performance by the Construction

Observer of this Agreement shall neither conflict with any laws, statutes, regulations, or decisions affecting the Construction Observer nor breach any contractual covenants or restrictions between the Construction Observer and any other party.

The undersigned signatory or signatories for the Construction Observer hereby represent and warrant that each signatory is a fully authorized officer, partner or representative, as applicable, of the Construction Observer and that said signatory has full and complete authority to execute this Agreement on behalf of the Construction Observer. The County shall be relying on the assurances provided in this Section in entering into this Agreement.

29. **Waiver of Default or Remedy.** Failure of the County to declare a default immediately upon its occurrence, or any delay by the County in taking any action in connection with a default, shall not constitute a waiver of the default, but the County shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement. Pursuit of any one or more of the remedies set forth herein shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law. Payment by the County to the Construction Observer following a default hereunder shall not be construed as a waiver of such default.

30. **Entire Agreement** It is expressly agreed by the Construction Observer, as a material consideration for the execution of this Agreement, that this Agreement, with the specific references to written extrinsic documents, is the entire agreement of the parties, that there are, and were, no oral representations, warranties, understandings, stipulations, agreements, or promises pertaining to this Agreement or the expressly mentioned extrinsic documents not incorporated in writing in this Agreement. The County and the Construction Observer agree that this Agreement may not be altered, waived, amended, or extended except by an instrument in writing signed by both the County and the Construction Observer.

31. **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement.

32. **Severability.** If any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of said provision and of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law, unless such provision or the application of such provision is, in the sole determination of the County, essential to its rights hereunder, in which event the County may terminate all or a portion of this Agreement in accordance with the provisions of Section 7 hereof.

33. **Successors.** This Agreement shall be binding upon and inure to the benefit of the County, the Construction Observer, and their respective heirs, executors, administrators, successors, and permitted assigns, including any successor agency to the County.

34. **Texas Franchise Tax Certification.** The Construction Observer hereby certifies that it is not delinquent in its Texas franchise tax payments, or, alternatively, that it is exempt from, or not subject to, such tax. A false statement concerning the Construction Observer's franchise tax status shall constitute grounds for cancellation of this Agreement, at the sole option of the County.

35. **Sales and Use Taxes.** The stated amounts of all payments to be made by the County to the Construction Observer pursuant to this Agreement are inclusive of Federal, state, or other taxes, if any, however designated, levied, or based, provided however, that the County acknowledges and represents that it is a tax-exempt entity under Sections 151.309, et seq., of the Texas Tax Code.

36. **Sole Benefit.** This Agreement is entered into for the sole benefit of the County and the Construction Observer and, where permitted pursuant to this agreement, their respective successors and assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit

for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

37. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any arbitrator or any court or other governmental or judicial County by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision. The County and the Construction Observer are of equal bargaining positions and have executed this Agreement of their own free wills after consulting with competent legal counsel, and both parties are fully informed of and familiar with its terms.

This agreement is hereby accepted and acknowledged below.

CONSTRUCTION OBSERVER:

WILLIAMSON COUNTY:

By: R. I. Newton  
Signature

By: John C. Doerfler  
Signature

R. I. Newton  
Printed Name

John C. Doerfler  
Printed Name

Vice President  
Title

County Judge  
Title

January 30, 2002  
Date

2-19-02  
Date

#### LIST OF EXHIBITS

Appendix A - Services to be Provided by Construction Observer

Appendix B - Fee Schedule

Appendix C - Work Authorization

## **Appendix A Scope of Services**

### **I. Pre-construction**

- A. Receive pre-construction documents, verify compliance with contract, between the County and the Construction Contractor, and submit to the Manager.
  - 1. Workers compensation insurance coverage certificate
    - a) Prime contractor
    - b) Sub contractor(s)
  - 2. Verify evidence of performance and payment bond within 10 days after written notification to proceed and prior to beginning work.
  - 3. Certificate of insurance.
- B. Verify receipt of the Contractor's schedule of operations.

### **II. During Construction**

- A. Manage Contractor Payments - Receive invoices from the Contractor, review, verify quantities of work performed & materials used, approve/reject, or prepare a statement of total value of the work done less 10% retained, and less all previous payments, & submit to the County for payment.
- B. Inspect Construction Work
  - 1. Meet with the Contractor to establish an understanding of the critical stages of the work.
  - 2. Check line, grade, and dimensions of roadways and structures with survey instruments, as deemed necessary by the Construction Observer.
  - 3. Periodically observe to see if specified procedures, spelled out in the plans and Specifications, are being followed.
  - 4. Advise the Contractor, and request corrective action be taken, if an inspection reveals that work has not been properly performed.
  - 5. Re-inspect non-conforming work.
  - 6. Evaluate and document the Contractor's operations and production with respect to quality and progress.



## **Appendix A Scope of Services**

7. Verify and perform spot checks on quantities being identified, measured, recorded and verified by comparisons against plan, contract quantities and plan dimensions.
8. Maintain "redline" drawings to document the changes made to the constructed project. The central, full size copy marked "Redlines" will be located at 505 East Huntland Drive, Suite 220; Austin, Texas 78752. The color pencil to be used will be red. The manager will furnish two copies of contract documents, plans, project construction manual, special provisions, and special specifications to the Construction Observer.
9. Check materials delivered to the project to determine if they have been tested in accordance with the "Quality Assurance Program".
10. Receive, review, verify, and log all "project test" results from the Contractor.
11. Accept all materials and workmanship.
12. Validate QC test results by verification tests from independent samples (Ref: Appendix A pg. 2 of 16, Project Construction Manual)
13. Record, and maintain on the project, results of testing in accordance with the County's requirements.
14. Report to the Manager on the contractors' compliance with the identification of test results with the test number, date of testing, at the station and elevation of the test on the appropriate plan sheet.
15. When test requirements are not met order the performance of independent material testing in accordance with the "Quality Assurance Program".
16. Receive and transmit, to the Manager, of the Contractors "trench safety plan" prepared and sealed by a registered professional engineer.
17. Prepare all change order documents, negotiate the price of new work with the contractor, evaluate costs, and submit recommendation to the Manager.
18. Provide digital and video photo logging of project activities.
19. Review and report to the Manager on the contractors' compliance with Environmental Protection Agency (EPA) National Pollution Prevention Discharge Elimination System (NPDES) General Permit Requirements.

## Appendix A Scope of Services

20. Prepare EPA Notice of Intent (NOI) for signature by the County and the Contractor & transmit to the Manager.
  21. Provide inspection of Barricade, sign, and traffic handling on a daily basis and prepare a formal report three times per month, two daytime and one nighttime, for transmittal to the Manager and ultimate notification of the Contractor (Ref: 502-4, Project Construction Manual).
  22. Receive from the Contractor, and verify compliance with specifications, Manufacturer Certificates of Compliance of each and every specified material or manufactured equipment item.
  23. Evaluate damages to existing trees using International Shade Tree Conference Standards and the formula in Section LIV. **Tree and Plant Protection** of the Special Conditions.
  24. Verify adequate straight edge and contractors' performance of surface Type B testing of the Asphalt Concrete Pavement (ACP).
  25. Review the ACP mix for compliance with the project specifications.
  26. Develop outline, coordinate, and manage, pre-placement meeting at least one month prior to the placement of ACP.
  27. Verify the submittal of Tex 233-F production charts to the Manager on a weekly basis.
  28. Verify the submittal of all production chart originals to the Manager at the completion of the ACP work.
  29. Manage "Request for Information" (RFI) notices for the construction work.
- C. Maintain a Project Diary which will include:
- Date
  - Weather conditions
  - Contract time charged and reasons for days credited
  - Work in progress, including temporary erosion control
  - Location of work
  - Contractor's and subcontractor's work force
  - Arrival and departure of equipment

## Appendix A Scope of Services

- Quantity of equipment and its usage at the project site.
  - Important instructions to the contractor
  - Names of official visitors and a summary of any discussions with visitors
  - Unusual construction or work conditions
  - *Decision making discussions with the contractor*
  - Disagreements with the contractor
  - Detailed information that may have a connection with a probable dispute or claim against the County
  - Project completion and final inspection
- D. Perform erosion control inspections and maintain Storm Water Pollution Prevention Plan documents in accordance with current NPDES regulations.
- E. Provide Assistance to the Program Manager to establish Program Process and Controls.

### III. Final Acceptance

- A. Verify transmittal, by the Contractor to the County, of an affidavit stating that all bills related to any work, labor, equipment or supplies have been paid and that there are no outstanding claims or bills remaining.
- B. Review and verify final statement prepared by the Contractor, or prepare a final statement of the value of all the work performed showing the balance due under the terms of the contract, and submit to the Engineer for verification and approval.
- C. Review and verify submission, to the Engineer, of the "As-Built" drawings dated and signed by the Contractor and his project superintendent prior to final acceptance.
- D. Verify acquisition of the maintenance bond, for the two-year period from the date of final acceptance.
- E. Issue a Certificate of Completion.
- F. Notify the Manager for Final Inspection.
- G. Prepare EPA Notice of Termination and transmit to the Manager for submission to the EPA through the County.

## 2000 Williamson County Road Bond Program

## Appendix B - Rate Schedule

**HALLIBURTON  
KBR**

	<u>Rate</u>	<u>Unit</u>
Project Manager	\$128	Hrs
Chief Inspector (Field)	\$64	Hrs
Inspector III	\$60	Hrs
Inspector II	\$53	Hrs
Administrative Technician	\$50	Hrs
Record Keeper	\$64	Hrs
<b>Sub Contractors</b>		
Landscape Architect	\$94	Hrs
Materials Engineer	\$94	Hrs
Materials Technician	\$46	Hrs
Survey Supervisor	\$85	Hrs
Survey Party (3 person)	\$146	Hrs
<b>Material Sampling and Testing</b>		
<b>Item 0132-518</b>		
Moisture-Density Relationship	\$165	EA
Atterberg Limits	\$50	EA
Sieve Analysis	\$55	EA
In-Place Nuclear Density	\$13	EA
Water content	\$11	EA
Trip Charges	\$68	EA
Tech Time	\$46	Hrs
<b>Item 0247-524</b>		
Moisture Density Curve (Tex 113-E)	\$165	EA
Atterberg Limits	\$50	EA
Sieve Analysis	\$55	EA
In-Place Nuclear Density (Tex-115-E)	\$24	EA
Base Thickness Control	\$17	EA
Trip Charges	\$68	EA
Tech Time	\$46	Hrs
<b>Item 251-517</b>		
Moisture Density Curve (Tex 113-E)	\$165	EA
Atterberg Limits	\$50	EA
Sieve Analysis	\$55	EA
In-Place Densities (Tex-115-E)	\$24	EA
Base Thickness Control	\$17	EA
Trip Charges	\$68	EA
Tech Time	\$46	Hrs
<b>Item 432-501</b>		
Concrete Cylinder Compressive Strength	\$15	EA
Slump	\$0	EA
Air Content	\$0	EA
Tech Time	\$46	Hrs
Trip Charges	\$68	EA

2000 Williamson County Road Bond Program  
Appendix B - Rate Schedule

HALLIBURTON  
KBR

<b>Item 530-501</b>		
Concrete Cylinder Compressive Strength	\$15	EA
Slump	\$0	EA
Air Content	\$0	EA
Tech Time	\$46	Hrs
Trip Charges	\$68	EA
<b>Item 3146-564</b>		
Bag Sample Pick-up	\$83	EA
Vehicle Charges	\$17	EA
Specimen Molding (3 per set)	\$35	SET
Laboratory Density (3 per set)	\$35	SET
Hveem Stability (3 per set)	\$35	SET
Max. Specific Gravity	\$39	EA
Air Voids	\$39	SET
Mat Densities	\$19	CORE
Thickness	\$6	EA
Field-Cut Specimens (6" dia.)	\$66	CORE
Extraction/Gradation & Asphalt Content	\$182	EA
Trips	\$68	EA

Direct Expense

Mileage	\$0.345	mi.	
Reproduction	\$1,500	LS	*
Photographic & video supplies & processing	\$3,300	LS	*
Communications			
Start-up	\$55	EA	
Monthly	\$65	Mo	
Other expenses	\$2,600	LS	*

\* Maximum amount for each work authorization

Notes: Rates subject to 4.5% escalation on January 1st of each year.  
The above rates are straight time rates. Overtime rates for flsa non-exempt employees will be charged at 1.5 times the rates shown above.

## APPENDIX C

## WORK AUTHORIZATION NO. 1

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of the Agreement, entered into by and between Williamson County ("County") and Kellogg Brown & Root, Inc. ("Construction Observer").

**Part 1.** The Construction Observer will provide the engineering services contained in Appendix A of the Agreement with the following limitations and exceptions (If "None," so state. If more space is required state, "See attached" and attach a complete description of the Scope of Work): None

The location and description of the construction work to be observed under this work authorization are as follows: Project: WC-1055 (DB Wood Reconstruction)

The Construction Contractor is Austin Bridge & Road, Inc.

The Project Engineer is PBS & J.

**Part 2.** The maximum amount payable services under this work authorization without modification is \$190,578.00. The estimate of labor and other direct costs used to establish the maximum amount payable is attached hereto.

**Part 3.** Payment to the Construction Observer for the services established under this Work Authorization shall be made in accordance with the Agreement.

**Part 4.** This Work Authorization is effective on November 1, 2001 and shall terminate on October 31, 2002, unless extended by a Supplemental Work Authorization. Notice to Proceed is given in accordance with the terms herein.

**Part 5.** This Work Authorization does not waive the parties' responsibilities and obligations provided under the contract.

## APPENDIX C

**Part 6.** This Work Authorization is hereby accepted and acknowledged below.

CONSTRUCTION OBSERVER

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

Signature

R. I. Newton

Printed Name

Vice President

Title

January 30, 2002

Date

WILLIAMSON COUNTY

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

Signature

John C. Doerfler

Printed Name

County Judge

Title

2-19-02

Date

OK  
M

Williamson County Road Bond Program  
Work Authorization No. 1  
Fee Estimate

**HALLIBURTON  
KBR**

Labor	Total	Unit		Rate	Total
Project Manager	624	Hrs	@	\$128	\$79,872.00
Chief Inspector (Field)	816	Hrs	@	\$64	\$52,224.00
Inspector III				\$60	
Inspector II				\$53	
Administrative Technician	36	Hrs	@	\$50	\$1,800.00
Record Keeper	432	Hrs	@	\$64	\$27,648.00

**Sub Contractors**

Landscape Architect	27	Hrs	@	\$94	\$2,538.00
Materials Engineer	28	Hrs	@	\$94	\$2,632.00
Materials Technician	4	Hrs	@	\$46	\$184.00
Survey Supervisor	8	Hrs	@	\$85	\$680.00
Survey Party (3 person)	8	Hrs	@	\$146	\$1,168.00
Material Sampling and Testing					

**Item 0132-518**

Moisture-Density Relationship	1	EA	@	\$165	\$165.00
Atterberg Limits	1	EA	@	\$50	\$50.00
Sieve Analysis	1	EA	@	\$55	\$55.00
In-Place Nuclear Density	3	EA	@	\$13	\$39.00
Water content	3	EA	@	\$11	\$33.00
Trip Charges	2	EA	@	\$68	\$136.00
Tech Time	4	Hrs	@	\$46	\$184.00

**Item 0247-524**

Moisture Density Curve (Tex 113-E)	1	EA	@	\$165	\$165.00
Atterberg Limits	1	EA	@	\$50	\$50.00
Sieve Analysis	1	EA	@	\$55	\$55.00
In-Place Nuclear Density (Tex-115-E)	3	EA	@	\$24	\$72.00
Base Thickness Control	1	EA	@	\$17	\$17.00
Trip Charges	2	EA	@	\$68	\$136.00
Tech Time	4	Hrs	@	\$46	\$184.00

**Item 251-517**

Moisture Density Curve (Tex 113-E)	1	EA	@	\$165	\$165.00
Atterberg Limits	1	EA	@	\$50	\$50.00
Sieve Analysis	1	EA	@	\$55	\$55.00
In-Place Densities (Tex-115-E)	3	EA	@	\$24	\$72.00
Base Thickness Control	1	EA	@	\$17	\$17.00
Trip Charges	2	EA	@	\$68	\$136.00
Tech Time	4	Hrs	@	\$46	\$184.00

**Item 432-501**

Concrete Cylinder Compressive Strength	3	EA	@	\$15	\$45.00
Slump	1	EA	@	\$0	\$0.00
Air Content	1	EA	@	\$0	\$0.00
Tech Time	2	Hrs	@	\$46	\$92.00
Trip Charges	2	EA	@	\$68	\$136.00



Williamson County Road Bond Program  
Work Authorization No. 1  
Fee Estimate

**HALLIBURTON  
KBR**

**Item 530-501**

Concrete Cylinder Compressive Strength	3	EA	@	\$15	\$45.00
Slump	1	EA	@	\$0	\$0.00
Air Content	1	EA	@	\$0	\$0.00
Tech Time	2	Hrs	@	\$46	\$92.00
Trip Charges	2	EA	@	\$68	\$136.00

**Item 3146-564**

Bag Sample Pick-up	1	EA	@	\$83	\$83.00
Vehicle Charges	1	EA	@	\$17	\$17.00
Specimen Molding (3 per set)	1	SET	@	\$35	\$35.00
Laboratory Density (3 per set)	1	SET	@	\$35	\$35.00
Hveem Stability (3 per set)	1	SET	@	\$35	\$35.00
Max. Specific Gravity	1	EA	@	\$39	\$39.00
Air Voids	1	SET	@	\$39	\$39.00
Mat Densities	2	CORE	@	\$19	\$38.00
Thickness	2	EA	@	\$6	\$12.00
Field-Cut Specimens (6" dia.)	2	CORE	@	\$66	\$132.00
Extraction/Gradation & Asphalt Content	2	EA	@	\$182	\$364.00
Trips	1	EA	@	\$68	\$68.00

**Direct Expense**

Mileage	30030	mi.	@	\$0.345	\$10,360.35	
Reproduction	1	LS	@	\$1,500	\$1,500.00	*
Photographic & video supplies & processing	1	LS	@	\$3,300	\$3,300.00	*
Communications						
Start-up	2	EA	@	\$55	\$110.00	
Monthly	9	Mo	@	\$65	\$585.00	
Other expenses				\$2,514	\$2,514	*

\$190,578.00

\* Maximum amount for each Work Authorization

Note: Rates subject to 4.5% escalation on January 1st of each year.

The above rates are straight time rates. Overtime rates for flsa non-exempt employees will be charged at 1.5 times the rates shown above.

This Fee Estimate provides an estimate of Construction Observation Services as detailed in Appendix A Scope of Services for this work Authorization. This Fee Estimate establishes the maximum amount payable unless authorized by written supplemental agreement. The Construction Observer retains the discretion to use the resources listed above to remain within the total compensation cap.

# Certificate of Insurance

COMPANIES AFFORDING COVERAGE	
Company A -	Pacific Employers Insurance Company
Company B -	Underwriters at Lloyds

Produced by:  
Aon Risk Services of Texas, Inc.  
2000 Bering Drive, Suite 900  
Houston, Texas 77057  
(713) 430-6000

NAME AND ADDRESS OF CERTIFICATE HOLDER

Williamson County  
405 Martin Luther King  
Georgetown, TX 78626

NAME AND ADDRESS OF INSURED

Kellogg Brown & Root, Inc.  
Room 01/655  
P. O. Box 3  
Houston, TX 77001

This is to certify that the policies of insurance as described below have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, 30 days prior written notice will be given to the certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company or upon this agency. The certificate neither affirmatively nor negatively amends, extends or alters the coverage afforded by Policies shown below.

TYPE OF INSURANCE	CO	POLICY NUMBER	POLICY PERIOD	LIMIT OF LIABILITY	
<b>WORKERS' COMPENSATION &amp; EMPLOYER'S LIABILITY</b> Coverage A - Workers' Compensation Incl. All States End., USLHWCA OCS Ext. & Vol. Comp.  Coverage B - Employers Liability Including Maritime, Jones Act	A	WLRC43087861 SCFC43087903	01 JAN 2002 to 01 JAN 2003	Coverage A -	STATUTORY
				Coverage B -	\$2,000,000
<b>COMMERCIAL GENERAL LIABILITY</b> All Operations of the Insured, Incl. Offshore, Blanket Written Contractual Products/Completed Operations Broad Form Bodily Injury /Property Damage Liability	A	HDOG19895403	01 JAN 2000 to 01 JAN 2003	\$2,000,000	Each Occurrence Combined Single Limit
<b>BUSINESS AUTOMOBILE LIABILITY</b> Incl. All owned, non-owned and hired automobiles Bodily Injury Liability/Property Damage Liability	A	ISAH07678307	01 JAN 2000 to 01 JAN 2003	\$2,000,000	Each Occurrence Combined Single Limit
<b>EXCESS LIABILITY</b>	B	ARS-2962	01 OCT 2001 to 01 OCT 2002	\$1,000,000	Each Occurrence Combined Single Limit Excess of the Limits Specified Above

COMMENTS:

Agreement for Construction Observation Engineering Services for the 2000 Williamson County Road Bond Program

Certificate Holder is included as an additional insured and provided waivers of subrogation, but only with respect to and to the extent of the liabilities assumed by insured under written contract.

"XCU" coverage included

Date 12-Feb-02

John Roberts

  
Authorized Signature  
Aon Risk Services of Texas, Inc.

# Certificate of Insurance

Producer:  
Aon Risk Services of Texas, Inc.  
2000 Bering Drive, Suite 900  
Houston, Texas 77057-3790  
(713) 430-6000

NAME AND ADDRESS OF CERTIFICATE HOLDER

Williamson County  
405 Martin Luther King  
Georgetown, TX 78626

NAME AND ADDRESS OF INSURED

Kellogg Brown & Root, Inc.  
P. O. Box 3  
Room 01/655  
Houston, TX 77001

This is to certify that the policies of insurance as described below have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, 30 days prior written notice will be given to the certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company or upon this agency. The certificate neither affirmatively nor negatively amends, extends or alters the coverage afforded by Policies shown below.

TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD	LIMIT OF LIABILITY	
"All Risk" Property Insurance subject to terms and conditions of the policy  Location of Property:  505 East Huntland Austin, Texas	ARS-2871	01 JUL 2001 to 01 JUL 2002	US\$500,000	Any One Occurrence  VALUABLE PAPERS COVERAGE

COMMENTS:

Agreement for Construction Observation Engineering Services for the 2000 Williamson County Road Bond Program

Certificate Holder is listed as Loss Payee as required by written agreement, but limited to the operations of the Named Insured under said agreement, and always subject to the policy terms, conditions and exclusions.

Insurance Company(ies)  
Factory Mutual Insurance Company  
National Union Fire Insurance Company of Pittsburgh, PA  
Zurich American Insurance Company

Date: 12-Feb-02  
John Roberts

  
Authorized Signature  
Aon Risk Services of Texas, Inc.

BROWN&amp;ROOT/TAX

ID:713-676-5206

FEB 13'02 12:10 No.007 P.02

Form **W-9**

(Rev. December 1999)

(Department of the Treasury  
Internal Revenue Service)**Request for Taxpayer  
Identification Number and Certification**Give form to the  
requester. Do NOT  
send to the IRS.

Name (If a joint account, or you changed your name, see Specific Instructions on page 2.)

Kellogg Brown &amp; Root, Inc. (formerly known as Brown &amp; Root, Inc.)

Business name, if different from above. (See Specific Instructions on page 2.)

Check appropriate box:

☐ Individual/Sole proprietor☒ Corporation☐ Partnership☐ Other

Address (number, street, and apt. or suite no.)

4100 Clinton Drive P. O. Box 3

City, state, and ZIP code

Houston, TX 77020-6299

Requester's name and address (optional)

Williamson County Texas

405 Martin Luther King

Georgetown, TX 78626

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, if you are a resident alien OR a sole proprietor, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number

| | | | | | | |

OR

Employer identification number

7 | 6 | 0 | 2 | 8 | 4 | 7 | 8 | 8

**Part II For Payees Exempt From Backup  
Withholding (See the instructions  
on page 2.)****Part III Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

**Certification Instructions.**—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign  
Here

Signature

Thomas H. Drainord

Date 02/13/02

**Purpose of Form.**—A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify the TIN you are giving is correct for you are waiting for a number to be issued.
2. Certify you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are an exempt payee.

**Note:** If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**What is Backup Withholding?**—Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding

include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS tells the requester that you furnished an incorrect TIN, or
3. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or

5. You do not certify your TIN when required. See the Part III instructions on page 2 for details.

Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate instructions for the Requester of Form W-9.

**Penalties**

**Failure To Furnish TIN.**—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding.**—If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal Penalty for Falsifying Information.**—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Abuse of TINs.**—If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Cat. No. 10231X

Form W-9 (Rev. 12-99)

Received Feb-13-02 13:35

From-713 676 5200

To-Halliburton KBR

Page 002

**RECORDERS MEMORANDUM**

All or parts of the text on this page was not  
clearly legible for satisfactory recordation.

**AGENDA ITEM 23**

**Consider approval of Cedar Breaks Addendum #5 - Preparation of Front End Documents.**

Moved: **Commissioner Hays**

Seconded: **Commissioner Limmer**

Motion: To approve the Cedar Breaks Addendum #5 for preparation of bid documents with PBS&J.

Vote: **4 - 0**

< Attachment >