

AGENDA ITEM 16

Consider approving McNeil Road Phase I and Phase II - Construction Observation Services Agreement for Gray Jansing & Associates.

Moved: **Judge Doerfler**

Seconded: **Commissioner Boatright**

Motion: To approve McNeil Road Phase I and Phase II - Construction Observation Services Agreement for Gray Jansing & Associates.

Vote: 4 - 0

< Attachment >



GRAY • JANSING & ASSOCIATES, INC.

November 12, 2003

Mr. Michael J. Weaver
Road Bond Manager
Williamson County Road Bond Program
c/o Prime Strategies
14 Galloping Road
Round Rock, Texas 78681

**Re: Construction Observation Services Agreement
McNeil Road Phase I and Phase II Improvements
GJA Proposal No. 03073**

Dear Mr. Weaver:

Please find attached two copies of the referenced agreement. In the preparation of the agreement we were advised by Mike Ebling of HNTB that the requirement for us to retain a quality assurance engineering firm for supplemental quality assurance would not be necessary. We therefore removed references to those services from the agreement. The total fee proposed generally falls within the range discussed for the total estimated construction cost of both phases.

We look forward to the continuation of representing the McNeil Road Project in providing construction observation services. Should any questions arise, feel free to contact us.

Sincerely,

GRAY • JANSING & ASSOCIATES, INC.


John M. Jansing, Jr., P.E.
Principal

JMJ:pel
Attachment

WILLIAMSON COUNTY, TEXAS
AGREEMENT FOR CONSTRUCTION OBSERVATION
ENGINEERING SERVICES
FOR THE
2000 Williamson County Road Bond Program
McNeil Road Phase I and Phase II Improvements

THIS AGREEMENT, made as of the ____ day of _____, 2003, by and between **WILLIAMSON COUNTY**, hereinafter referred to as the "County", and **GRAY ♦ JANSING & ASSOCIATES, INC.**, a Texas corporation, hereinafter referred to as the "Construction Observer."

WITNESSETH:

WHEREAS, the County proposes to construct 2000 Williamson County Road Bond Program, McNeil Road Phase I and Phase II Improvements, 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 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 observation 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.** After execution of this contract, the Engineer shall not proceed with the work outlined under Section 2 until authorized in writing by the county to proceed as provided under Section 6. This contract shall extend for a period not more than December 31, 2006 unless extended by written supplemental agreement duly executed by the Construction Observer and the County.

After Execution of each Work Authorization and after receipt of the Notice to Proceed, 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) working 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) working 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 \$316,456, 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 fee 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. Invoicing shall be based on billing rates established in the 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.

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 observation 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 Gray ♦ Jansing & Associates, Inc., 8217 Shoal Creek Road, Suite 200, Austin, Texas 78757, 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

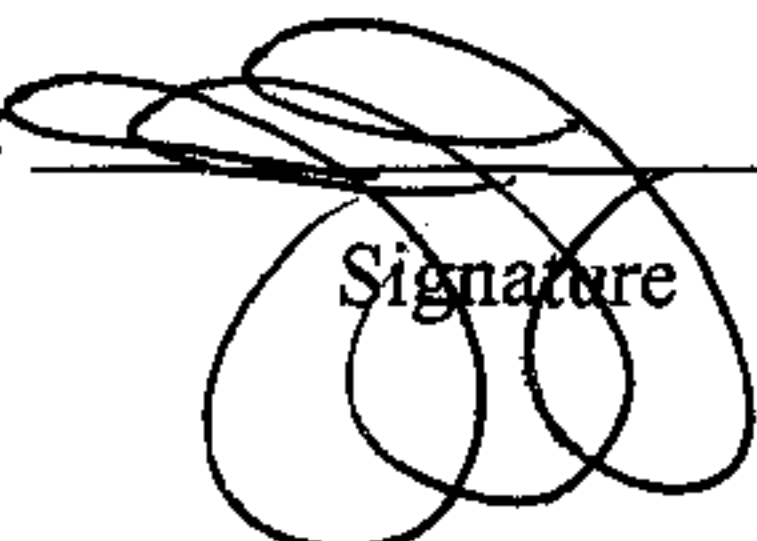
for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

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.

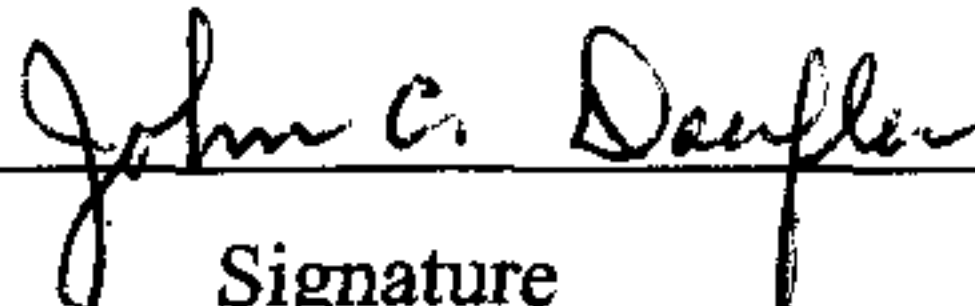
CONSTRUCTION OBSERVER:

WILLIAMSON COUNTY:

By: 
Signature
John M. Jansing, Jr., P.E.
Printed Name

Executive Vice President
Title

11/12/03
Date

By: 
Signature
John C. Doerfler
Printed Name

County Judge
Title

11-25-03
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. Certify all insurance requirements.
- 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 HNTB Corporation.
- B. Observe and Monitor 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 Gray ♦ Jansing & Associates, Inc., 8217 Shoal Creek Blvd., Suite 200, Austin, Texas. 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). Verification testing will be at the expense of Williamson County by a qualified testing firm of their choosing.
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. Provide digital and video photo logging of project activities.
18. 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

19. Prepare EPA Notice of Intent (NOI) for signature by the County and the Contractor & transmit to the Manager.
20. 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).
21. Receive from the Contractor, and verify compliance with specifications, Manufacturer Certificates of Compliance of each and every specified material or manufactured equipment item.
22. 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.
23. Verify adequate straight edge and contractors' performance of surface Type B testing of the Asphalt Concrete Pavement (ACP).
24. Review the ACP mix for compliance with the project specifications.
25. Develop outline, coordinate, and manage, pre-placement meeting at least one month prior to the placement of ACP.
26. Verify the submittal of Tex 233-F production charts to the Manager on a weekly basis.
27. Verify the submittal of all production chart originals to the Manager at the completion of the ACP work.
28. 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.

III. Final Acceptance

- A. 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.
- B. 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.
- C. Issue a Certificate of Completion.
- D. Notify the Manager for Final Inspection.
- E. Prepare EPA Notice of Termination and transmit to the Manager for submission to the EPA through the County.

APPENDIX B

FEE SCHEDULE

TASK 1 - PRECONSTRUCTION

<u>Staff Assignment</u>	<u>Projected Hours To Complete</u>	<u>Fee</u>
Principal	4	\$800
Senior Engineer	16	\$2,400
Project Representation	32	\$3,200
Clerical	8	<u>\$576</u>
Total Task 1		\$6,976

TASK 2 – DURING CONSTRUCTION

<u>Staff Assignment</u>	<u>Projected Hours To Complete</u>	<u>Fee</u>
Principal		
Senior Engineer	468	\$70,200
Project Representation	2,120	\$212,000
Clerical	200	<u>\$14,400</u>
Total Task 2		\$296,600

TASK 3 – FINAL ACCEPTANCE

<u>Staff Assignment</u>	<u>Projected Hours To Complete</u>	<u>Fee</u>
Principal	8	\$1,600
Senior Engineer	16	\$2,400
Project Representation	60	\$6,000
Clerical	40	<u>\$2,880</u>
Total Task 3		\$12,880

TOTAL WORK AUTHORIZATION NO. 1 \$316,456

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, Texas, a political subdivision of the State of Texas, (*the "County"*) and Gray ♦ Jansing & Associates, Inc. (*the "Construction Observer"*).

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

Services as set forth in Appendix A "Scope of Services".

Part 2. The maximum amount payable for services under this Work Authorization without modification is \$316,456.

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 shall become effective on the date of final acceptance of the parties hereto and shall terminate on December 31, 2006, unless extended by a Supplemental Work Authorization.

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

APPENDIX C (con't.)

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

CONSTRUCTION OBSERVER:
Gray ♦ Jansing & Associates, Inc.

COUNTY:
Williamson County, Texas

By: 
Signature

John M. Jansing, Jr., P.E.
Printed Name

Executive Vice President
Title

11/12/03
Date

By: 
Signature

John C. Doerfler
Printed Name

County Judge
Title

11-25-03
Date