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AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Authorize the County Judge to execute a contract with LJA Engineering, Inc. for professional Design, Engineering and Construction Phase services on the FM 110 (IH 35 at Yarrington Road to SH 80) project in Hays County.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	March 26, 2013	\$2,133,062.00

LINE ITEM NUMBER

Bond funds

AUDITOR USE ONLY

AUDITOR COMMENTS:

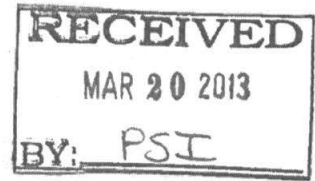
PURCHASING GUIDELINES FOLLOWED: YES

AUDITOR REVIEW: BILL HERZOG

REQUESTED BY	SPONSOR	CO-SPONSOR
Michael J. Weaver	INGALSBE	N/A

SUMMARY

Contract No. EM110 (I435) Harrington Rd. to SH80



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
 - 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
- pre-qualified list /
RFQ process / selection*

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

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Contract No. _____

Notices (as applicable)

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

Documentation for Payment

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

*— Still need
for audit **

Contract No. _____

PROFESSIONAL SERVICES AGREEMENT

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PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
HAYS COUNTY §

This Agreement is made and entered into this day by and between Hays County, Texas, a political subdivision of the State of Texas, (*the "County"*) and LJA Engineering, Inc (*the "Engineer"*).

WHEREAS, *County* proposes to construct FM 110 from IH 35 at Yarrington Road to SH 80 in Hays County; ✓

WHEREAS, *County* desires to obtain professional services for Design Engineering and Construction Phase Services to develop FM 110, further described in Exhibit B (*the "Project"*); ✓

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

WHEREAS, *Engineer* agrees to adhere to the conditions as set forth in the Master Agreement whereby County has entered into a Pass-Through Toll Agreement with the Texas Department of Transportation which is a part of and attached to this Agreement as Appendix C. As such, the County shall be referred to as the DEVELOPER, and the Texas Department of Transportation shall be referred to as the DEPARTMENT.

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

**Section I
Employment of the Engineer**

County agrees to employ *Engineer* and *Engineer* agrees to perform professional engineering services for the *Project* as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the agent as designated in the Scope of Services in Appendix A, or as otherwise designated by the Hays County Commissioners Court (*individually or collectively the "County Designee"*). The *County Designee* shall have complete authority for the purpose of resolving technical matters. In all other cases, the decision of the Hays County Commissioners Court shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

**Section II
Basic Services of the Engineer**

A. In consideration of the compensation herein provided, *Engineer* shall perform professional engineering services for the *Project*, which are acceptable to the *County Designee*, based on standard engineering practices and the scope of work described on the Exhibits attached to

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this Agreement. *Engineer* shall also serve as *County's* professional engineer in those phases of the *Project* to which this Agreement applies and will consult with and give advice to *County* during the performance of *Engineer's* services.

- B. *Engineer* shall not commence work until *Engineer* has been thoroughly briefed on the scope of the *Project* and has been notified in writing by the *County Designee* to proceed, as evidenced by a Work Authorization substantially in the form of Attachment A to Exhibit I.
- C. *County* shall provide *Engineer* with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular *Project* at no cost to *Engineer*; however, any and all such information shall remain the property of *County* and shall be returned, if the *County Designee* so instructs *Engineer*.
- D. *Engineer* shall perform the following Basic Scope of Services:
1. The basic Scope of Services shall generally consist of all elements of work, materials and equipment required for the development of the *Project*, including any Public Hearings, satisfactory to the *County Designee* and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Hays County.
 2. The following documents shall be used in the development of the *Project*:
 - a. TxDOT 1980 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, Revision 5, including:
 - i) The 1998 reprint of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways
 - ii) The September 31, 1998, Federal Highway Administration (FHWA) Mandate from the National Cooperative Highway Research Program (NCHRP), Report 350
 - b. Texas Department of Transportation Construction Manual
 - c. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2004 (English units)
 - d. National Environmental Policy Act (NEPA)
 - e. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994
 - f. Americans with Disabilities Act (ADA) Regulations
 - g. U.S. Army Corps Regulations
 - h. Southern Building Code
 - i. Uniform Building Code. Note: Hays County will use the 1997 Uniform Building Code (May 1, 1997) as a guide for design.
 - j. National Electrical Code (most current version)
 - k. Hays County Bond Program Standard Procedures Manual
 - l. TxDOT Bridge Division Foundation Manual

3. As part of the Scope of Services, *Engineer* shall submit its work products to *County* for review at regular intervals.
4. The detailed Scope of Services for the *Project* is set forth herein as Appendix A to this Agreement, and is expressly incorporated and made a part hereof.

**Section III
Fee schedule**

- A. For and in consideration of the performance by *Engineer* of the work described in the Scope of Services, *County* shall pay and *Engineer* shall receive the fee set forth in Exhibit I. The fee is based upon the hourly rates set forth in Exhibit II. Exhibits I and II are attached hereto and made a part hereof. Invoices shall be submitted by *Engineer* on a monthly basis and are due upon presentation of all items required hereunder, and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- B. For the performance of services not specifically described in the Scope of Services *Engineer* shall receive the additional services compensation described in Exhibit III, which is attached hereto and made a part hereof. In the event of any dispute over the classification of *Engineer's* services as basic or additional services under this agreement, the decision of the *County Designee* shall be final and binding on *Engineer*.

**Section IV
Period of Service**

- A. *Engineer* shall perform the professional services described in Appendix A, the Scope of Services, in accordance with the Production Schedule attached hereto as Exhibit IV and made a part hereof.
- B. This Agreement shall become effective upon the date approved by *County* and will remain in full force and effect for the period required for the design, construction contract award and construction of the *Project*, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. *Engineer* shall complete all design work as described in the Scope of Services within 730 calendar days from receipt by *Engineer* of *County's* written Work Authorization and in accordance with the production timeline included in the Scope of Services. ✓
- C. Neither *Engineer* nor *County* shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond *Engineer's* or *County's* reasonable control. Upon the discovery of such an event, *Engineer* shall notify *County*, and attend a special meeting with the *County Designee* to propose a program for a solution to the problem, and, if necessary, to establish an estimated period of time of suspension or extension of the work. A written request for an extension of time, when properly documented and justified by the circumstances, will be granted by the *County Designee*.
- D. *County* may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within sixty (60) days of receipt by *Engineer* of written Notice of Reinstatement from *County*. *Engineer*, upon receipt of a Notice of Suspension

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shall follow the procedures described in the attached Exhibit V, which is attached hereto and made a part hereof. In the event such suspension of the **Project** or the **Engineer's** services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, **Engineer** may terminate this Agreement in writing and such termination shall be treated as a Notice of Termination as provided herein.

- E. Either party may terminate this Agreement for the substantial failure of the other party to perform in accordance with the terms of this Agreement (the substantiality of such failure to be based on standard engineering practices and the scope of work described on the Exhibits attached to this Agreement), through no material fault of the terminating party, and **County** may terminate this Agreement for reasons other than substantial failure by **Engineer** to perform by delivering a written Notice of Termination which shall take effect on the tenth day following receipt. If mutually agreed upon, the obligation to provide services under this Agreement may be terminated without cause upon thirty (30) days written notice. **Engineer** shall follow the procedures specified in Exhibit V upon issuance or receipt of such notice. In the event of termination of this Agreement because of the substantial failure of **Engineer** to perform, **County** may prosecute the work to completion by contract or otherwise and, in such a case, **Engineer** shall be liable for any additional costs incurred by **County**.
- F. **Engineer** specifically acknowledges that **County** will sustain damages for each day beyond the required dates of completion of the Preliminary and Design Phases as defined in the Scope of Services that the work has not been accepted and approved. Because of the impracticality and extreme difficulty of fixing and ascertaining **County's** actual damages, **Engineer** agrees that _____ One Hundred _____ and No/100 Dollars (\$___100___) per day shall be retained by **County** from any amounts due **Engineer** for every day that **Engineer** does not meet the production requirements set forth in Exhibit IV. ✓
- G. Periods of time (i) during which a Notice of Suspension is in effect, or (ii) during which a submitted and complete engineering work product is in technical review, as described in Section VI, or (iii) during which a delay directly related to matters described in section IV(C) above, shall not be taken into account in computing the amount of liquidated damages and/or the number of days in Exhibit IV. In the event that an engineering work product received by **County** is found to be incomplete, as defined in Section VI, Paragraph B, the period of time from the original submittal of the engineering work product to the receipt of subsequent submittal necessary to produce a completed submittal will be taken into account in computing the number of days and the amount of compensation.
- H. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

Section V Coordination with the County

- A. The **County Designee** will act on behalf of **County** with respect to the work to be performed

under this Agreement. The *County Designee* shall have complete authority to interpret and define *County's* policies and decisions with respect to *Engineer's* services. The *County Designee* may designate representatives to transmit instructions and receive information.

- B. *Engineer* shall not commence work on any phase of the *Project* until a thorough briefing on the scope of the *Project* is received and a written Work Authorization is issued by the *County Designee* in substantially the form of Attachment A to Exhibit I.
- C. *Engineer* shall furnish all available data and reasonable assistance necessary for the development of applications or supporting documentation for any permits, grants, or planning advances as applicable to the professional services to be rendered pursuant to this Agreement, provided that *Engineer* shall not be obligated to develop additional data, appear at hearings, or prepare extensive reports, unless compensated for such work under other provisions of this Agreement.
- D. *Engineer* shall have the responsibility at all times under the terms of this Agreement to advise *County* whether in *Engineer's* judgment it is feasible to proceed with the recommendations given any constraints affecting the *Project*.
- E. *Engineer* shall cooperate and coordinate with *County's* staff, and other engineers and contractors as reasonable and necessary and as required by the *County Designee*.

Section VI Review of Work Product

- A. *Engineer's* engineering work product will be reviewed by *County* under its applicable technical requirements and procedures.
- B. Reports, plans, specifications, and supporting documents, (the "engineering work products"), shall be submitted by *Engineer* on or before the dates specified in the Production Schedule set forth in Exhibit IV. Upon receipt of the engineering work products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the scope of services described herein) have been included in the engineering work products in compliance with the requirements of this Agreement. . The completeness of any engineering work product submitted to *County* shall be determined by *County* within thirty (30) days of such submittal and *County* shall notify *Engineer* in writing within such 30-day period if such work product has been found to be incomplete.
- C. If the submission is complete, *County* shall notify *Engineer* and *County's* technical review process will begin.
- D. If the submission is incomplete, *County* shall notify *Engineer*, who shall perform such professional services as are required to complete the work and resubmit it to *County*. This process shall be repeated until a submission is complete.

- E. *County* shall review the completed work for compliance with the scope of work. If necessary, the completed work shall be returned to *Engineer*, who shall perform any required work and resubmit it to *County*. This process shall be repeated until the work is accepted. "Acceptance" shall mean that in the *County Designee's* opinion substantial compliance with the requirements of this Agreement has been achieved.
- F. After acceptance, *Engineer* shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive final approval by the *County Designee*. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.
- G. After approval of final engineering work products, *Engineer* shall without additional compensation perform any work required as a result of *Engineer's* development of the products which is found to be in error or omission due to *Engineer's* negligence. However, any work required or occasioned for the convenience of *County* after approval of a final product shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of *Engineer's* work products as complete, accepted, or approved under this Agreement, the decision of the *County Designee* shall be final and binding on *Engineer*, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VII Revision to Work Product

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

Section VIII Engineer's Responsibility and Liability

- A. *Engineer* covenants to undertake no task in which a professional license or certificate is

- required unless he or someone under his direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, **Engineer** shall inform **County** of such event within five working days.
- B. **Engineer** shall be responsible for conformance with applicable federal and state laws, county permitting requirements, and city ordinances currently in effect, except as otherwise directed by the **County Designee** regarding county permitting or similar requirements properly waivable by the **County Designee**.
- C. Acceptance and approval of the final plans by **County** shall not release **Engineer** of any responsibility or liability for the accuracy and competency of his designs, working drawings, specifications, or other documents or work performed under this Agreement. Neither acceptance nor approval by **County** shall be an assumption of responsibility or liability by **County** for any defect, error, or omission in the designs, working drawings, specifications, or other documents prepared by **Engineer**.
- D. **Engineer** shall indemnify, protect, and save harmless **County**, its officials and employees and its agents and agents' employees from and against all claims, suits, actions, liability, loss, damage, reasonable attorney's fees, costs, and expenses (including, but not limited to expenses related to expert witnesses) of any kind whatsoever, to the extent arising from any negligent act, error or omission of **Engineer** or any of its subcontractors in connection with the performance of services under this Agreement; provided, however, **Engineer** shall not be responsible for the negligence of any other party, other than its subcontractors.
- E. **Engineer's** opinions of probable **Project** cost or construction cost represent **Engineer's** professional judgment as a design professional familiar with the construction industry, but **Engineer** does not guarantee that proposals, bids, or the construction cost, itself, will not vary from **Engineer's** opinions of probable cost.
- F. **Engineer** shall perform all services and responsibilities required of **Engineer** under this Agreement using at least that standard of care which a reasonably prudent engineer in Texas, who is licensed by the State Board of Engineers, or the State Board of Registered Professional Surveyors, as applicable, would use in similar circumstances.
- G. **Engineer** represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for performance of the services required under this Agreement and that **Engineer** shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the reasonable opinion of **County**, to perform the services when and as required and without delays. It is understood that **County** will approve assignment and release of all key **Engineer** and professional personnel.
- H. All employees of **Engineer** shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of **Engineer**, who in the opinion of **County** is incompetent or whose conduct becomes detrimental to the work or coordination with **County**, shall upon **County's** and/or **County Designee's** request be immediately

removed from association with the *Project*.

- I. If the procurement of adequate qualified personnel by Engineer would result in taxable professional services being charged to Engineer (e.g. Surveying), then the charges for such services shall be paid by County directly so that County may assert tax exemption under Section 151.309 of the Texas Tax Code, or other applicable law. Any such direct payment by County is hereby granted, by the Hays County Commissioners Court, a discretionary exemption from the competitive requirements set out in Section 232.023 of the Texas Local Government Code.
- J. *Engineer* shall furnish all equipment, transportation, supplies, and materials required for its operations under this Agreement.
- K. *Engineer* shall place his Texas Professional Engineer's seal of endorsement on all documents and engineering data furnished to *County*, as required by law.
- L. *Engineer* is an independent contractor under this Agreement. Neither he nor any officer, agent nor employee of *Engineer* shall be classified as an employee of *County*.

Section IX
Ownership of Documents

- A. Any and all documents, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by *Engineer* are the property of *County* and upon completion of the work or termination of this Agreement or as otherwise instructed by *County* and/or *County Designee*, shall be delivered to *County* in an organized fashion with *Engineer* retaining a copy. ✓
- B. Any reuse by *Engineer* of any such documents described in subsection A above, without the specific written consent of *County* shall be at *Engineer's* sole risk and without liability or legal exposure to *County*. Should *Engineer* be terminated, *Engineer* shall not be liable for *County's* use of partially completed designs, plans, or specifications on this *Project* or any other project, except to the extent such documents were deemed complete or otherwise "Accepted" or "Approved" as provided herein or represent completed work sealed by *Engineer*, or Surveyor, as applicable, as specified by professional standards.
- C. *Engineer* will not be responsible for any use or any modifications to the plans and documents described in subsection A performed by any entity other than Hays County, and *County's* respective engineers and contractors, without the specific written consent of *Engineer*. Any modification as described in this paragraph shall be made in accordance with all applicable professional standards.

Section X
Maintenance of and Right of Access to Records

- A. *Engineer* agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the *Project*, together with documentation of evaluations and study results for a period of three (3) years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
- B. *Engineer* further agrees that *County* or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of *Engineer*, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. *Engineer* agrees that *County* shall have access during normal working hours to all necessary *Engineer* facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. *County* shall give *Engineer* reasonable advance notice of intended audits.
- C. *Engineer* further agrees to include in all its sub-consultant agreements hereunder a provision to the effect that the sub-consultant agrees that *County* shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such sub-consultant, involving transactions to the subcontract, and further, that *County* shall have access during normal working hours to all sub-consultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (D) hereof. *County* shall give sub-consultant reasonable advance notice of intended audits.
- D. *Engineer* and sub-consultant agree to photocopy such documents as may be requested by *County*. *County* agrees to reimburse *Engineer* for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

Section XI
Miscellaneous

- A. *Severability*. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be limited to the clause, sentence, provision, paragraph or article so held to be invalid, illegal, or ineffective.
- B. *Venue*. It is contemplated that this Agreement shall be performed in Hays County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Hays County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

C. **Equal Opportunity in Employment.** *Engineer* agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit VI, which is attached hereto and made a part hereof.

D. **Certificate of Engineer.** *Engineer* certifies that neither *Engineer* nor any members of *Engineer's* firm has:

- (1) Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bonafide employee working solely for *Engineer*) to solicit or secure the work provided by the Agreement.
- (2) Agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
- (3) Paid or agreed to pay to any firm, organization, or person (other than bonafide employees working solely for *Engineer*) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.

Engineer further agrees that this certification may be furnished to any local, state or federal governmental agencies in connection with this Agreement and for those portions of the **Project** involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.

E. **Notice.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

ENGINEER: Jeff P. Collins
 LJA Engineering, Inc.
 5316 Highway 290 West, Suite 150
 Austin, TX 78735



COUNTY: Hays County Judge
 111 E. San Antonio Street
 Suite 300
 San Marcos, Texas 78666
 Attn: Judge Liz Sumter (or successor)

with copy to: Hays County District Attorney – Civil Division Chief
 111 E. San Antonio, Suite 204
 San Marcos, Texas 78666

Attn: Mark Kennedy (or successor)

and to: Prime Strategies, Inc.
1508 South Lamar Blvd.
Austin, Texas 78704
Attn: Michael Weaver

and to: [Hays County Designee]

✓
OK
my 3/20/2013

- F. **Insurance Requirements.** *Engineer* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VII, which is attached hereto and made a part hereof.
- G. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent *County* becomes aware that *Engineer* is delinquent in the payment of property taxes related to property located in Hays County at the time of invoicing, *Engineer* hereby assigns any payments to be made for services rendered hereunder to the Hays County Tax Assessor-Collector for the payment of said delinquent taxes. Notwithstanding the above, *County* shall not have an affirmative duty to determine if *Engineer* is delinquent in the payment of property taxes.
- H. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of *County* and *Engineer* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Engineer* may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- I. **Bidding Exemption.** This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.
- J. **Taxpayer Identification.** *Engineer* shall provide to *County Designee* upon submittal of *Engineer's* initial invoice requesting payment Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations.
- K. **Compliance with Laws.** *Engineer* shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the *Engineer* shall furnish the *County* with certification of compliance with said laws, statutes,

ordinances, rules, regulations, orders, and decrees above specified.

- L. **Reports of Accidents.** Within 24 hours after *Engineer* becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the *Engineer*), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Agreement, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Agreement.
- M. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between *County* and *Engineer* and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both *County* and *Engineer*. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS COURT.
- N. **Captions Not a Part Hereof.** The captions or subtitles of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- O. **Incorporation of Exhibits and Attachments.** All of the Exhibits and Attachments, and Appendices referred to in the Agreement are incorporated by reference as if set forth verbatim herein.
- P. **Entity Status.** By my signature below, I certify that *Engineer* is a Registered Licensed Professional Engineer, duly authorized to transact and do business in the State of Texas. ✓
- Q. **Acknowledgement.** As a duly authorized representative of *Engineer*, I acknowledge by my signature below that I have read and understand the above paragraphs and that *Engineer* has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.
- R. **Definition of Engineer.** The term "Engineer" as used herein is defined as including Registered Professional Surveyors, as applicable to the work to be performed under this Agreement, and any reference to professional standards in regards to a Registered Professional Surveyor shall relate to those standards promulgated by the State Board of Registered Professional Surveyors.

Contract No. _____

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EXECUTED this _____ day of _____, 200__.

THE ENGINEER:

BY: _____

Jeff P. Collins

HAYS COUNTY:

BY: _____

Printed Name: Jeff P. Collins

Hays County Judge

Title: Executive Vice President

Reviewed as to Form By: _____

County Attorney

Funds Verified By: _____

County Auditor

*OK
mly 3/20/2013*

January 2009

EXHIBIT I

COMPENSATION FOR PROFESSIONAL SERVICES

ACTUAL COST OF SERVICES METHOD

[Note: A separate Compensation Agreement will be attached for Compensation on a Work-Order Basis]

SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The not-to-be-exceeded fee for the performance of the Scope of Services described in the Agreement shall be the sum of \$ 2,133,062.00 . ✓
- 1.2 The basis of compensation for the services of principals and employees engaged in the performance of the work shall be the hourly rates set forth in attached Exhibit II.
- 1.3 *Engineer* shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement at the *Engineer's* invoice cost.

SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 *Engineer* and *County* acknowledge the fact that the not-to-be-exceeded fee is the total estimated costs of services to be rendered under this Agreement. This not-to-be-exceeded fee is based upon the labor and non-labor costs set forth in Exhibit II to this Agreement and described above, estimated to be required in the performance of the various phases of work provided for under this Agreement. Should the actual costs of the services rendered under this Agreement be less than such estimated cost, then *Engineer* shall receive compensation for only those services actually rendered.

SECTION 3 - WORK AUTHORIZATIONS

- 3.1 *County* will prepare and issue Work Authorizations, in the form identified and attached hereto as Attachment A to authorize the *Engineer* to perform one or more tasks. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, and a fee amount agreed upon by the *County* and *Engineer*. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the *Engineer's* responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.
- 3.2 Work included in a Work Authorization shall not begin until *County* and *Engineer* have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization. The *Engineer* shall promptly notify the *County* of any event which will affect completion of the Work Authorization, although such notification

shall not relieve the **Engineer** from costs or liabilities resulting from delays in completion of the Work Authorization. Any changes in the Work Authorization shall be enacted by a written Supplemental Work Authorization before additional work may be performed or additional costs incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization. The **Engineer** shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a Supplemental Work Authorization.

SECTION 4 - ADDITIONAL SERVICES

- 4.1 For additional services, compensation shall be negotiated in accordance with Exhibit III.
- 4.2 **Engineer** shall be compensated for extra services not included in the Scope of Services described in the Agreement on the basis specified in Exhibit III; however, **Engineer** shall not be compensated for work made necessary by **Engineer's** negligent errors or omissions.
- 4.3 The maximum amount payable under this Agreement without modification (the "**Compensation Cap**") is \$ 2,133,062.00, provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the **Compensation Cap**. ✓

SECTION 5 - REQUIRED SUPPORTING DOCUMENTATION

- 5.1 Upon submittal of the initial invoice for service, **Engineer** shall provide **the Hays County Auditor** with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.
- 5.2 All invoices submitted to **the Hays County Auditor** will be accompanied by an original, complete packet of supporting documentation. Invoices should detail hours worked by staff person, with a description of the work performed by individuals. Invoices should also contain a representation of the percentage of completion relative to that segment of the **Project**.
- 5.3 For additional services performed pursuant to Section III B of this Agreement, a separate invoice or itemization of this work will be presented with the same requirements for supporting documentation as in Section 5.2 of this Exhibit.
- 5.4 Invoices requesting reimbursement for expenditures related to the project (reimbursables) must be accompanied by copies of the provider's invoice which was previously paid by **Engineer**.

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ATTACHMENT A

WORK AUTHORIZATION NO. TEMPLATE

This Work Authorization is made pursuant to the terms and conditions of the Agreement entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (*the "County"*) and LJA Engineering, Inc. (*the "Engineer"*).

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

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

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

Part 4. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on _____, unless extended by a Supplemental Work Authorization.

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

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ATTACHMENT A (con't.)

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

ENGINEER:

LJA Engineering, Inc.

COUNTY:

Hays County, Texas

By: _____

Jeff P. Collins
Signature

By: _____

Signature

Jeff P. Collins, PE

Printed Name

Printed Name

Executive Vice President

Title

Title

March 19, 2013

Date

Date

LIST OF EXHIBITS

Exhibit A - Services to be Provided by County

Exhibit B - Services to be Provided by Engineer

Exhibit C - Work Schedule

Exhibit D - Fee Schedule

EXHIBIT II
HOURLY RATES

1. Senior Project Manager	\$	215.00
2. . Senior Engineer	\$	175.00
3. Project Engineer	\$	145.00
4. Graduate Engineer.....	\$	130.00
5. Senior Engineering Technician.. ..	\$	100.00
6. CADD Operator	\$	80.00
4. Secretary/Clerical.....	\$	70.00

*OK
my 3/20/2012*

EXHIBIT III

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

1. The fees described in Exhibits I and II to this Agreement shall provide compensation to *Engineer* for the work described in the Basic Scope of Services of the Agreement.
2. For the performance of work not described in the Basic Scope of Services of the Agreement, *County* shall pay and *Engineer* shall receive, under a negotiated contract modification, compensation based upon the method and rates set forth in Exhibits I and II to the Agreement.
3. The performance of any additional services must be authorized in writing in advance by the *Hays County Commissioners Court*.
4. In the event of any dispute over the classification of *Engineer's* services as either basic or additional services, the decision of the *Hays County Commissioners Court* shall be final and binding.

EXHIBIT IV

PRODUCTION SCHEDULE

This Agreement shall become effective upon the date approved by *County* and will remain in full force and effect for the period required for the design, construction contract award and construction of the *Project*, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. *Engineer* shall complete all design work as described in the Scope of Services within the timeline and/or schedule provided in the Scope of Services.

The number of days expiring from the date of submittal to *County* of a complete work product to the date the review is finished and comments returned to *Engineer* shall not be included within the days allowed for completion.

EXHIBIT V

PROCEDURES FOR TERMINATION OR SUSPENSION

Procedures for *Engineer* to follow upon receipt of Notice of Termination:

1. Upon receipt of a Notice of Termination and prior to the effective date of the termination, *Engineer* shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of the Notice of Termination *Engineer* shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of termination shall be delivered to *County* as a pre-condition to final payment.
3. Upon the above conditions being met, *County* shall pay *Engineer* for approved services actually performed under this Agreement, less previous payments.
4. Failure by *Engineer* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Engineer* of any and all rights or claims to collect the fee that *Engineer* may rightfully be entitled to for services performed under this Agreement.

Procedures for *Engineer* to follow upon receipt of Notice of Suspension:

1. Upon receipt of a Notice of Suspension and prior to the effective date of the suspension, *Engineer* shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the effective date of suspension. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to *County*, but shall be retained by *Engineer* unless requested by *County*.
2. During the period of suspension, *Engineer* may submit the above-referenced statement to *County* for payment of the approved services actually performed under this Agreement, less previous payments.

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

1. In the event that *Engineer* exercises such right to terminate, within thirty (30) days after receipt by *County* of *Engineer's* Notice of Termination, *Engineer* shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed reports, designs, plans, studies, specifications and other work product shall be delivered to *County* as a pre-condition to final payment. Upon the above conditions being met, *County* shall pay *Engineer* for approved services actually performed under this Agreement, less previous payments.
3. Failure by *Engineer* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Engineer* of any and all rights or claims to collect the fee that *Engineer* may rightfully be entitled to for services performed under this Agreement.

EXHIBIT VI**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. **Engineer** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. **Engineer** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. **Engineer** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. **Engineer** will, in all solicitations or advertisements for employees placed by or on behalf of **Engineer**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Engineer** will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of **Engineer's** obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. **Engineer** will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor.
- E. **Engineer** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of **Engineer's** non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and **Engineer** may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. **Engineer** will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September

January 2009

24, 1965, as amended by Executive Order 11375 (41 CFR 60), so that such provisions will be binding upon each subcontractor or vendor. **Engineer** will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance: provided, however, that in the event **Engineer** becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by **County** or Federal Agency, **Engineer** may request **County** and United States to enter into such litigation to protect the interest of the United States.

EXHIBIT VII**INSURANCE REQUIREMENTS**

During the life of this Agreement, *Engineer* agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$ 1,000,000.00 per occurrence and \$ 2,000,000.00 in the aggregate, including coverage on same for independent subcontractor(s). HAYS COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$ 1,000,000.00 per occurrence and \$ 1,000,000.00 in the aggregate. *Engineer* shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$ 1,000,000.00 .
- E. In the event *Engineer* is self-insured in connection with any or all of the above-required insurance policies, *Engineer* shall submit proof of such self-insurance and all financial statements as reasonably required by the *County* in order to determine the acceptability of such self-insurance.

Engineer shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance or self-insurance has been approved by *County*. *Engineer* shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved. Approval of the insurance by *County* shall not relieve or decrease the liability of *Engineer* hereunder.

The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. *Engineer* shall furnish *County* with a certification of coverage issued by the insurer. *Engineer* shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

It is the intention of the *County* and the *Hays County Commissioners Court*, and agreed to and hereby acknowledged by the *Engineer*, that no provision of this Professional Services Agreement shall be construed to require the *County* or *any agent of Hays County* to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as

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specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required under this Exhibit which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.

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APPENDIX A

SCOPE OF SERVICES

THE ATTACHED SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE HAYS COUNTY PROFESSIONAL SERVICES AGREEMENT. TO THE EXTENT THE SCOPE IS INCONSISTENT WITH THE PROFESSIONAL SERVICES AGREEMENT, THE PROFESSIONAL SERVICES AGREEMENT WILL SUPERSEDE THE SCOPE AND WILL BE CONTROLLING.

THE ENGINEER SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE ENGINEERING PROFESSIONAL TO BE DETERMINED BY COUNTY AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN EXHIBIT II.

EXCEPT AS PROVIDED FOR FEE SERVICES OR WORK-ORDER BASED SERVICES, THE ATTACHED SCOPE OF SERVICES SHALL INCLUDE A PRODUCTION SCHEDULE REFLECTING A TIMELINE FOR THE EXECUTION OF THE PROJECT.

THE COUNTY DESIGNEE THAT SHALL BE THE PRIMARY POINT OF CONTACT UNDER THIS AGREEMENT SHALL BE _____.

EXHIBIT A

**SERVICES TO BE PROVIDED BY HAYS COUNTY
FM 110 – IH 35/Yarrington Road to SH 80**

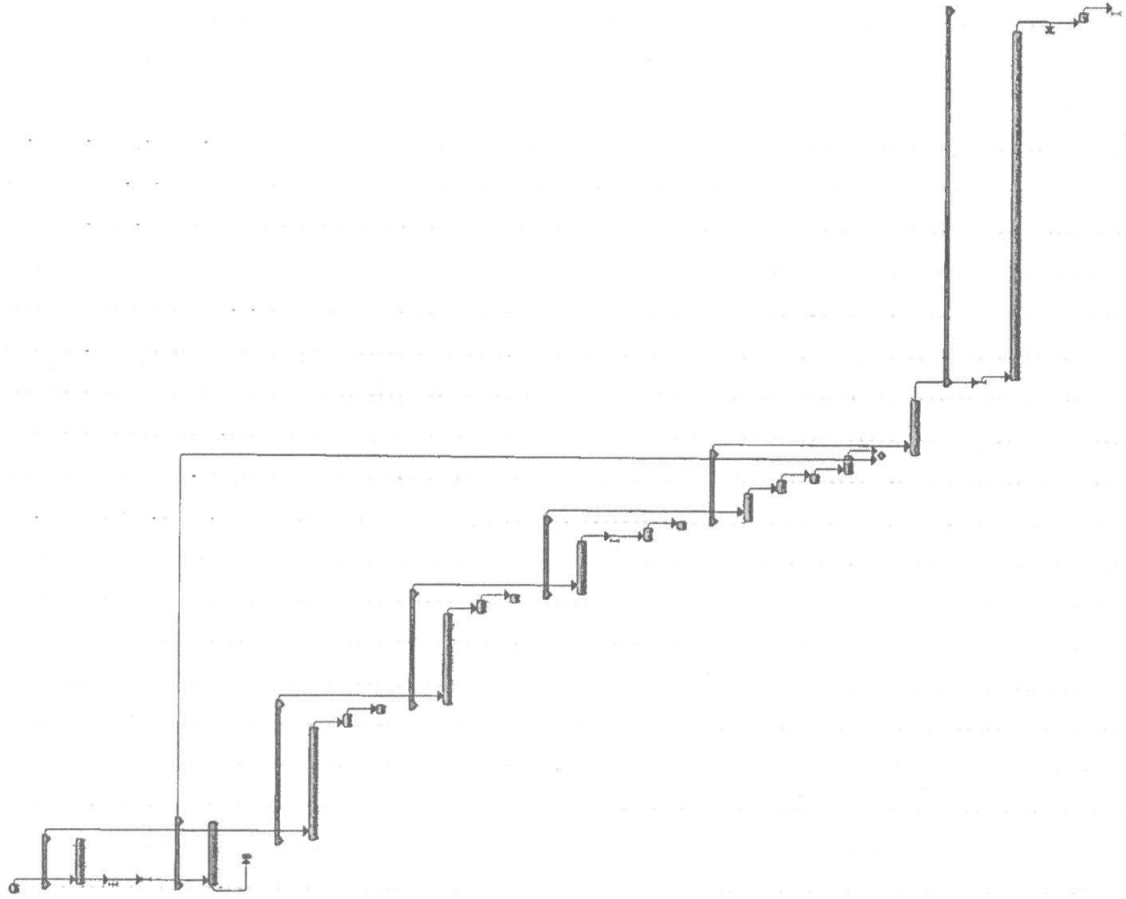
1. Hays County will provide a Project Manager, through their GEC, to serve as the primary point of contact for the consultant.
2. Hays County or it's GEC, will act as direct contact with TxDOT
3. Hays County shall provide all existing CADD files, GeoPak files, Cross-Sections, and As-built plans for roadways crossing FM 110. It is our understanding that TxDOT will provide the preliminary schematic to Hays County.
4. Hays County or GEC will lead Public Involvement Meetings.
5. Hays County will secure a location for the public involvement meetings.
6. Hays County will provide timely reviews in conjunction with the agreed upon schedule. It is our understanding that TxDOT will also provide reviews through Hays County.
7. TxDOT requires asbestos testing on all real property abandoned in place as a result of right-of-way acquisition. Hays County will procure all asbestos testing and removal required for the FM 110 Project.
8. The County will provide right-of-way acquisition services for this project.
9. The County will provide right-of-way relocation assistance if necessary.

EXHIBIT D
Fee Schedule

For fee schedule, see individual work authorizations

Exhibit C: Project Schedule

Task Name	Task ID	Start	Finish	Duration	Start	Finish
PM 110 Project	1	4/17/13	12/28/16	887 days		
Negotiation and NTP	2	4/17/13	4/28/13	10 days		
Data Collection	3	5/1/13	7/8/13	56 days		
Field Survey and Utility Location	4	5/1/13	7/8/13	56 days		
Initial Field Visit	5	5/1/13	5/1/13	1 day		
Design Concept Conference	6	5/9/13	5/9/13	1 day		
Environmental Compliance	7	5/1/13	5/1/13	70 days		
Environmental Compliance	8	5/1/13	5/1/13	70 days		
Public Involvement	9	5/1/13	5/1/13	5 days		
Schematic/30% P&E	10	7/10/13	2/4/14	186 days		
Schematic/30% Design	11	7/10/13	12/31/13	128 days		
Schematic/30% Review by County and TxDOT	12	1/1/14	12/1/14	15 days		
Schematic/30% Comment Resolution	13	1/23/14	2/6/14	10 days		
60% P&E	14	2/5/14	7/5/14	122 days		
60% Design	15	2/5/14	6/24/14	100 days		
60% Review by County and TxDOT	16	6/25/14	7/18/14	15 days		
60% Comment Resolution	17	7/11/14	7/24/14	10 days		
90% P&E	18	7/25/14	11/17/14	82 days		
90% Design	19	7/25/14	10/16/14	80 days		
90% TDR Review	20	10/17/14	10/17/14	1 day		
90% Review by County and TxDOT	21	10/17/14	11/6/14	15 days		
90% Comment Resolution	22	11/6/14	11/17/14	10 days		
100% P&E	23	11/18/14	2/26/15	73 days		
100% Plans	24	11/18/14	12/29/14	30 days		
100% Review by County and TxDOT	25	12/30/14	1/19/15	15 days		
100% Comment Resolution	26	1/16/15	1/28/15	10 days		
100% T&DOT Approval	27	1/28/15	2/26/15	28 days		
100% Signed and Sealed Plans	28	2/26/15	2/26/15	1 day		
Bid Phase	29	2/27/15	5/21/15	60 days		
Construction Phase	30	5/19/15	12/29/15	400 days		
Construction NTP	31	5/19/15	5/19/15	1 day		
Construction Phase Services	32	6/22/15	11/20/15	378 days		
TDR Walkthrough and Close Out	33	11/20/15	11/20/15	2 days		
As Built Documents	34	12/18/16	12/28/16	10 days		
Project Close Out	35	12/28/16	12/28/16	1 day		



Date: Wed 3/20/13

Task Critical Task

Progress Milestone

Summary Rolled Up Task

Rolled Up Critical Task

Rolled Up Milestone

Rolled Up Progress

Split

External Task

Project Summary

Group By Summary

Deadline

Exhibit B - General Scope of Services**SERVICES TO BE PROVIDED BY THE ENGINEER**

Roadway: FM 110
County: Hays
Limits: From IH 35/Yarrington Road to SH 80

General Work Description: Provide alternatives analysis, preliminary engineering, limited environmental studies, plans, specifications, and estimate (PS&E) development, and construction phase services to develop FM 110 from IH 35 to SH 80. The Engineer will perform the following tasks listed below, as described in detail in each Work Authorization:

TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION PLAN

- ◆ Project Management
- ◆ Meetings
- ◆ QA/QC & Document Control
- ◆ Invoicing, Contract Document Coordination
- ◆ Manage Sub Consultants
- ◆ Produce Project Scheduling

TASK 2 – ROUTE AND DESIGN STUDIES

- ◆ Perform Field Reconnaissance
- ◆ Perform Traffic Signal Warrant Analysis
- ◆ Perform a SH 21 Value Engineering Study
- ◆ Develop Preliminary Drainage
- ◆ Develop Preliminary Construction Estimates
- ◆ Develop a Ultimate & Interim Schematic
- ◆ Develop Typical Sections
- ◆ Create Horizontal Alignments
- ◆ Create Vertical Alignments and balance earthwork
- ◆ Develop Cross Sections
- ◆ Design Preliminary Retaining Walls
- ◆ Develop Traffic Control Plan

TASK 3 – FIELD SURVEYING

- ◆ Produce Topographic Design Survey
 - ◆ Right-of-Way Mapping
-

TASK 4 – PUBLIC INVOLVEMENT

- ◆ Develop Exhibits for Public Meetings
 - ◆ Attend Public Meetings
-

TASK 5 - UTILITIES

- ◆ Work with County Utility Coordinator
-

TASK 6 - ENVIRONMENTAL STUDIES

- ◆ Provide Environmental Assistance to complete clearance of project – as defined in Work Authorization
-

TASK 7 - GEOTECHNICAL SERVICES

- ◆ Collect Field Samples
 - ◆ Perform Laboratory Testing on Samples
 - ◆ Produce Geotechnical Report and Recommend Pavement Design
-

TASK 8 – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) DEVELOPMENT

- ◆ Produce Engineering Summary Report
- ◆ Complete Roadway Design, including:
 - Title Sheet (with Index of Sheets thereon or on a separate Index of Sheets)
 - Index
 - Project Layout / Horizontal Alignment Layout with Horizontal Alignment Data shown thereon.

- **Typical Sections;** existing and proposed; required for FM 110, IH 35, Yarrington Road, CR 158, SH 21, and SH 80 from the preliminary typical sections and shall incorporate the pavement design developed by the engineer and approved by the County.
- **Traffic Control Plan**
- **Removal Plan**
- **Horizontal Alignment Sheets**
- **Super elevation Sheets**
- **Roadway plan and profiles**
- **Preliminary Earthwork:** The Engineer shall analyze the earthwork to develop cut and fill.
- **Cross Sections:** Develop final design cross sections at 100' intervals along FM 110 and along each cross street for up to 200' back from the FM 110 centerline. The Engineer will develop the Cross Sections at 1"=1' and shall be delivered in standard GeoPak format on 11" x 17" sheets. Electronic files will be delivered on CD along with all other PS&E files.
- **Yarrington Road / FM 110 Intersection Layout.**
- **CR 158 / FM 110 Intersection Layout.**
- **SH 21 / FM 110 Intersection Layout.**
- **SH 80 / FM 110 Intersection Layout.**

- ◆ **Complete Drainage Design** – as described in Work Authorization
- ◆ **Produce Bridge Layouts**
- ◆ **Develop Signing and Pavement Marking Plans**
- ◆ **Produce Traffic Control Plans**
- ◆ **Design Traffic Signal Details**
- ◆ **Design Safety Illumination**
- ◆ **Develop Construction Estimates**
- ◆ **Ensure ADA Compliance with a RAS Review**

TASK 9 – CONSTRUCTION PHASE SERVICES

- ◆ **Assist County with Advertising, Bidding Phase**
- ◆ **Review Shop Drawings, Requests for Information from Contractor**

APPENDIX B

CONTRACTOR'S QUALIFICATIONS STATEMENT

General Scope of Services

SERVICES TO BE PROVIDED BY THE ENGINEER

Roadway: FM 110
County: Hays
Limits: From IH 35/Yarrington Road to SH 80

General Work Description: Provide alternatives analysis, preliminary engineering, limited environmental studies, plans, specifications, and estimate (PS&E) development, and construction phase services to develop FM 110 from IH 35 to SH 80. The Engineer will perform the following tasks listed below, as described in detail in each Work Authorization:

TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION PLAN

- ◆ Project Management
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- ◆ Manage Sub Consultants
- ◆ Produce Project Scheduling

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- ◆ Perform Field Reconnaissance
- ◆ Perform Traffic Signal Warrant Analysis
- ◆ Perform a SH 21 Value Engineering Study
- ◆ Develop Preliminary Drainage
- ◆ Develop Preliminary Construction Estimates
- ◆ Develop a Ultimate & Interim Schematic
- ◆ Develop Typical Sections
- ◆ Create Horizontal Alignments
- ◆ Create Vertical Alignments and balance earthwork
- ◆ Develop Cross Sections
- ◆ Design Preliminary Retaining Walls
- ◆ Develop Traffic Control Plan

TASK 3 – FIELD SURVEYING

- ◆ Produce Topographic Design Survey
 - ◆ Right-of-Way Mapping
-

TASK 4 – PUBLIC INVOLVEMENT

- ◆ Develop Exhibits for Public Meetings
 - ◆ Attend Public Meetings
-

TASK 5 - UTILITIES

- ◆ Work with County Utility Coordinator
-

TASK 6 - ENVIRONMENTAL STUDIES

- ◆ Provide Environmental Assistance to complete clearance of project – as defined in Work Authorization
-

TASK 7 - GEOTECHNICAL SERVICES

- ◆ Collect Field Samples
 - ◆ Perform Laboratory Testing on Samples
 - ◆ Produce Geotechnical Report and Recommend Pavement Design
-

TASK 8 – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) DEVELOPMENT

- ◆ Produce Engineering Summary Report
- ◆ Complete Roadway Design, including:
 - Title Sheet (with Index of Sheets thereon or on a separate Index of Sheets)
 - Index
 - Project Layout / Horizontal Alignment Layout with Horizontal Alignment

Data shown thereon.

- **Typical Sections;** existing and proposed; required for FM 110, IH 35, Yarrington Road, CR 158, SH 21, and SH 80 from the preliminary typical sections and shall incorporate the pavement design developed by the engineer and approved by the County.
- **Traffic Control Plan**
- **Removal Plan**
- **Horizontal Alignment Sheets**
- **Super elevation Sheets**
- **Roadway plan and profiles**
- **Preliminary Earthwork:** The Engineer shall analyze the earthwork to develop cut and fill.
- **Cross Sections:** Develop final design cross sections at 100' intervals along FM 110 and along each cross street for up to 200' back from the FM 110 centerline. The Engineer will develop the Cross Sections at 1"=1' and shall be delivered in standard GeoPak format on 11" x 17" sheets. Electronic files will be delivered on CD along with all other PS&E files.
- **Yarrington Road / FM 110 Intersection Layout.**
- **CR 158 / FM 110 Intersection Layout.**
- **SH 21 / FM 110 Intersection Layout.**
- **SH 80 / FM 110 Intersection Layout.**

- ◆ **Complete Drainage Design** – as described in Work Authorization
- ◆ **Produce Bridge Layouts**
- ◆ **Develop Signing and Pavement Marking Plans**
- ◆ **Produce Traffic Control Plans**
- ◆ **Design Traffic Signal Details**
- ◆ **Design Safety Illumination**
- ◆ **Develop Construction Estimates**
- ◆ **Ensure ADA Compliance with a RAS Review**

TASK 9 – CONSTRUCTION PHASE SERVICES

- ◆ **Assist County with Advertising, Bidding Phase**
- ◆ **Review Shop Drawings, Requests for Information from Contractor**

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
- 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)

- 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

PROFESSIONAL SERVICES AGREEMENT

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PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
HAYS COUNTY §

This Agreement is made and entered into this day by and between Hays County, Texas, a political subdivision of the State of Texas, (*the "County"*) and LJA Engineering, Inc. (*the "Engineer"*).

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WHEREAS, *County* proposes to construct a FM 110 from IH 35 at Yarrington Road to SH 80 in Hays County;

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WHEREAS, *County* desires to obtain professional services for Design Engineering and Construction Phase Services to develop FM 110, further described in Exhibit B (*the "Project"*);

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

WHEREAS, *Engineer* agrees to adhere to the conditions as set forth in the Master Agreement whereby *County* has entered into a Pass-Through Toll Agreement with the Texas Department of Transportation which is a part of and attached to this Agreement as Appendix C. As such, the *County* shall be referred to as the DEVELOPER, and the Texas Department of Transportation shall be referred to as the DEPARTMENT.

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

**Section I
Employment of the Engineer**

County agrees to employ *Engineer* and *Engineer* agrees to perform professional engineering services for the *Project* as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the agent as designated in the Scope of Services in Appendix A, or as otherwise designated by the Hays County Commissioners Court (*individually or collectively the "County Designee"*). The *County Designee* shall have complete authority for the purpose of resolving technical matters. In all other cases, the decision of the Hays County Commissioners Court shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

**Section II
Basic Services of the Engineer**

A. In consideration of the compensation herein provided, *Engineer* shall perform professional

engineering services for the *Project*, which are acceptable to the *County Designee*, based on standard engineering practices and the scope of work described on the Exhibits attached to this Agreement. *Engineer* shall also serve as *County's* professional engineer in those phases of the *Project* to which this Agreement applies and will consult with and give advice to *County* during the performance of *Engineer's* services.

- B. *Engineer* shall not commence work until *Engineer* has been thoroughly briefed on the scope of the *Project* and has been notified in writing by the *County Designee* to proceed, as evidenced by a Work Authorization substantially in the form of Attachment A to Exhibit I.
- C. *County* shall provide *Engineer* with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular *Project* at no cost to *Engineer*; however, any and all such information shall remain the property of *County* and shall be returned, if the *County Designee* so instructs *Engineer*.
- D. *Engineer* shall perform the following Basic Scope of Services:
 - 1. The basic Scope of Services shall generally consist of all elements of work, materials and equipment required for the development of the *Project*, including any Public Hearings, satisfactory to the *County Designee* and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Hays County.
 - 2. The following documents shall be used in the development of the *Project*:
 - a. TxDOT 1980 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, Revision 5, including:
 - i) The 1998 reprint of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways
 - ii) The September 31, 1998, Federal Highway Administration (FHWA) Mandate from the National Cooperative Highway Research Program (NCHRP), Report 350
 - b. Texas Department of Transportation Construction Manual
 - c. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2004 (English units)
 - d. National Environmental Policy Act (NEPA)
 - e. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994
 - f. Americans with Disabilities Act (ADA) Regulations
 - g. U.S. Army Corps Regulations
 - h. Southern Building Code
 - i. Uniform Building Code. Note: Hays County will use the 1997 Uniform Building Code (May 1, 1997) as a guide for design.
 - j. National Electrical Code (most current version)

- k. Hays County Bond Program Standard Procedures Manual
 - l. TxDOT Bridge Division Foundation Manual
3. As part of the Scope of Services, **Engineer** shall submit its work products to **County** for review at regular intervals.
 4. The detailed Scope of Services for the **Project** is set forth herein as Appendix A to this Agreement, and is expressly incorporated and made a part hereof.

Section III
Fee schedule

- A. For and in consideration of the performance by *Engineer* of the work described in the Scope of Services, *County* shall pay and *Engineer* shall receive the fee set forth in Exhibit I. The fee is based upon the hourly rates set forth in Exhibit II. Exhibits I and II are attached hereto and made a part hereof. Invoices shall be submitted by *Engineer* on a monthly basis and are due upon presentation of all items required hereunder, and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- B. For the performance of services not specifically described in the Scope of Services *Engineer* shall receive the additional services compensation described in Exhibit III, which is attached hereto and made a part hereof. In the event of any dispute over the classification of *Engineer's* services as basic or additional services under this agreement, the decision of the *County Designee* shall be final and binding on *Engineer*.

Section IV
Period of Service

- A. *Engineer* shall perform the professional services described in Appendix A, the Scope of Services, in accordance with the Production Schedule attached hereto as Exhibit IV and made a part hereof.
- B. This Agreement shall become effective upon the date approved by *County* and will remain in full force and effect for the period required for the design, construction contract award and construction of the *Project*, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. *Engineer* shall complete all design work as described in the Scope of Services within 730 calendar days from receipt by *Engineer* of *County's* written Work Authorization and in accordance with the production timeline included in the Scope of Services.
- C. Neither *Engineer* nor *County* shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond *Engineer's* or *County's* reasonable control. Upon the discovery of such an event, *Engineer* shall notify *County*, and attend a special meeting with the *County Designee* to propose a program for a solution to the problem, and, if necessary, to establish an estimated period of time of suspension or extension of the work. A written request for an extension of time, when properly documented and justified by the circumstances, will be granted by the *County Designee*.
- D. *County* may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within sixty (60) days of receipt by *Engineer* of written Notice of Reinstatement from *County*. *Engineer*, upon receipt of a Notice of Suspension

shall follow the procedures described in the attached Exhibit V, which is attached hereto and made a part hereof. In the event such suspension of the **Project** or the **Engineer's** services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, **Engineer** may terminate this Agreement in writing and such termination shall be treated as a Notice of Termination as provided herein.

- E. Either party may terminate this Agreement for the substantial failure of the other party to perform in accordance with the terms of this Agreement (the substantiality of such failure to be based on standard engineering practices and the scope of work described on the Exhibits attached to this Agreement), through no material fault of the terminating party, and **County** may terminate this Agreement for reasons other than substantial failure by **Engineer** to perform by delivering a written Notice of Termination which shall take effect on the tenth day following receipt. If mutually agreed upon, the obligation to provide services under this Agreement may be terminated without cause upon thirty (30) days written notice. **Engineer** shall follow the procedures specified in Exhibit V upon issuance or receipt of such notice. In the event of termination of this Agreement because of the substantial failure of **Engineer** to perform, **County** may prosecute the work to completion by contract or otherwise and, in such a case, **Engineer** shall be liable for any additional costs incurred by **County**.
- F. **Engineer** specifically acknowledges that **County** will sustain damages for each day beyond the required dates of completion of the Preliminary and Design Phases as defined in the Scope of Services that the work has not been accepted and approved. Because of the impracticality and extreme difficulty of fixing and ascertaining **County's** actual damages, **Engineer** agrees that One Hundred and No/100 Dollars (\$ 100) per day shall be retained by **County** from any amounts due **Engineer** for every day that **Engineer** does not meet the production requirements set forth in Exhibit IV.
- G. Periods of time (i) during which a Notice of Suspension is in effect, or (ii) during which a submitted and complete engineering work product is in technical review, as described in Section VI, or (iii) during which a delay directly related to matters described in section IV(C) above, shall not be taken into account in computing the amount of liquidated damages and/or the number of days in Exhibit IV. In the event that an engineering work product received by **County** is found to be incomplete, as defined in Section VI, Paragraph B, the period of time from the original submittal of the engineering work product to the receipt of subsequent submittal necessary to produce a completed submittal will be taken into account in computing the number of days and the amount of ~~liquidated damages~~ compensation.
- H. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

Section V Coordination with the County

- A. The **County Designee** will act on behalf of **County** with respect to the work to be performed

under this Agreement. The *County Designee* shall have complete authority to interpret and define *County's* policies and decisions with respect to *Engineer's* services. The *County Designee* may designate representatives to transmit instructions and receive information.

- B. *Engineer* shall not commence work on any phase of the *Project* until a thorough briefing on the scope of the *Project* is received and a written Work Authorization is issued by the *County Designee* in substantially the form of Attachment A to Exhibit I.
- C. *Engineer* shall furnish all available data and reasonable assistance necessary for the development of applications or supporting documentation for any permits, grants, or planning advances as applicable to the professional services to be rendered pursuant to this Agreement, provided that *Engineer* shall not be obligated to develop additional data, appear at hearings, or prepare extensive reports, unless compensated for such work under other provisions of this Agreement.
- D. *Engineer* shall have the responsibility at all times under the terms of this Agreement to advise *County* whether in *Engineer's* judgment it is feasible to proceed with the recommendations given any constraints affecting the *Project*.
- E. *Engineer* shall cooperate and coordinate with *County's* staff, and other engineers and contractors as reasonable and necessary and as required by the *County Designee*.

Section VI Review of Work Product

- A. *Engineer's* engineering work product will be reviewed by *County* under its applicable technical requirements and procedures.
- B. Reports, plans, specifications, and supporting documents, (the "engineering work products"), shall be submitted by *Engineer* on or before the dates specified in the Production Schedule set forth in Exhibit IV. Upon receipt of the engineering work products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the scope of services described herein) have been included in the engineering work products in compliance with the requirements of this Agreement. . The completeness of any engineering work product submitted to *County* shall be determined by *County* within thirty (30) days of such submittal and *County* shall notify *Engineer* in writing within such 30-day period if such work product has been found to be incomplete.
- C. If the submission is complete, *County* shall notify *Engineer* and *County's* technical review process will begin.
- D. If the submission is incomplete, *County* shall notify *Engineer*, who shall perform such professional services as are required to complete the work and resubmit it to *County*. This process shall be repeated until a submission is complete.

- E. *County* shall review the completed work for compliance with the scope of work. If necessary, the completed work shall be returned to *Engineer*, who shall perform any required work and resubmit it to *County*. This process shall be repeated until the work is accepted. "Acceptance" shall mean that in the *County Designee's* opinion substantial compliance with the requirements of this Agreement has been achieved.
- F. After acceptance, *Engineer* shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive final approval by the *County Designee*. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.
- G. After approval of final engineering work products, *Engineer* shall without additional compensation perform any work required as a result of *Engineer's* development of the products which is found to be in error or omission due to *Engineer's* negligence. However, any work required or occasioned for the convenience of *County* after approval of a final product shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of *Engineer's* work products as complete, accepted, or approved under this Agreement, the decision of the *County Designee* shall be final and binding on *Engineer*, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VII
Revision to Work Product

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

Section VIII
Engineer's Responsibility and Liability

- A. *Engineer* covenants to undertake no task in which a professional license or certificate is

required unless he or someone under his direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, **Engineer** shall inform **County** of such event within five working days.

- B. **Engineer** shall be responsible for conformance with applicable federal and state laws, county permitting requirements, and city ordinances currently in effect, except as otherwise directed by the **County Designee** regarding county permitting or similar requirements properly waivable by the **County Designee**.
- C. Acceptance and approval of the final plans by **County** shall not release **Engineer** of any responsibility or liability for the accuracy and competency of his designs, working drawings, specifications, or other documents or work performed under this Agreement. Neither acceptance nor approval by **County** shall be an assumption of responsibility or liability by **County** for any defect, error, or omission in the designs, working drawings, specifications, or other documents prepared by **Engineer**.
- D. **Engineer** shall indemnify, protect, and save harmless **County**, its officials and employees and its agents and agents' employees from and against all claims, suits, actions, liability, loss, damage, reasonable attorney's fees, costs, and expenses (including, but not limited to expenses related to expert witnesses) of any kind whatsoever, to the extent arising from any negligent act, error or omission of **Engineer** or any of its subcontractors in connection with the performance of services under this Agreement; provided, however, **Engineer** shall not be responsible for the negligence of any other party, other than its subcontractors.
- E. **Engineer's** opinions of probable **Project** cost or construction cost represent **Engineer's** professional judgment as a design professional familiar with the construction industry, but **Engineer** does not guarantee that proposals, bids, or the construction cost, itself, will not vary from **Engineer's** opinions of probable cost.
- F. **Engineer** shall perform all services and responsibilities required of **Engineer** under this Agreement using at least that standard of care which a reasonably prudent engineer in Texas, who is licensed by the State Board of Engineers, or the State Board of Registered Professional Surveyors, as applicable, would use in similar circumstances.
- G. **Engineer** represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for performance of the services required under this Agreement and that **Engineer** shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the reasonable opinion of **County**, to perform the services when and as required and without delays. It is understood that **County** will approve assignment and release of all key **Engineer** and professional personnel.
- H. All employees of **Engineer** shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of **Engineer**, who in the opinion of **County** is incompetent or whose conduct becomes detrimental to the work or coordination with **County**, shall upon **County's** and/or **County Designee's** request be immediately

removed from association with the *Project*.

- I. If the procurement of adequate qualified personnel by Engineer would result in taxable professional services being charged to Engineer (e.g. Surveying), then the charges for such services shall be paid by County directly so that County may assert tax exemption under Section 151.309 of the Texas Tax Code, or other applicable law. Any such direct payment by County is hereby granted, by the Hays County Commissioners Court, a discretionary exemption from the competitive requirements set out in Section 232.023 of the Texas Local Government Code.
- J. *Engineer* shall furnish all equipment, transportation, supplies, and materials required for its operations under this Agreement.
- K. *Engineer* shall place his Texas Professional Engineer's seal of endorsement on all documents and engineering data furnished to *County*, as required by law.
- L. *Engineer* is an independent contractor under this Agreement. Neither he nor any officer, agent nor employee of *Engineer* shall be classified as an employee of *County*.

Section IX Ownership of Documents

- A. Any and all documents, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by *Engineer* are the property of *County* and upon completion of the work or termination of this Agreement or as otherwise instructed by *County* and/or *County Designee*, shall be delivered to *County* in an organized fashion with *Engineer* retaining a copy.
- B. Any reuse by *Engineer* of any such documents described in subsection A above, without the specific written consent of *County* shall be at *Engineer's* sole risk and without liability or legal exposure to *County*. Should *Engineer* be terminated, *Engineer* shall not be liable for *County's* use of partially completed designs, plans, or specifications on this *Project* or any other project, except to the extent such documents were deemed complete or otherwise "Accepted" or "Approved" as provided herein or represent completed work sealed by *Engineer*, or Surveyor, as applicable, as specified by professional standards.
- C. *Engineer* will not be responsible for any use or any modifications to the plans and documents described in subsection A performed by any entity other than Hays County, and *County's* respective engineers and contractors, without the specific written consent of *Engineer*. Any modification as described in this paragraph shall be made in accordance with all applicable professional standards.

Section X
Maintenance of and Right of Access to Records

- A. *Engineer* agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the *Project*, together with documentation of evaluations and study results for a period of three (3) years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
- B. *Engineer* further agrees that *County* or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of *Engineer*, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. *Engineer* agrees that *County* shall have access during normal working hours to all necessary *Engineer* facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. *County* shall give *Engineer* reasonable advance notice of intended audits.
- C. *Engineer* further agrees to include in all its sub-consultant agreements hereunder a provision to the effect that the sub-consultant agrees that *County* shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such sub-consultant, involving transactions to the subcontract, and further, that *County* shall have access during normal working hours to all sub-consultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (D) hereof. *County* shall give sub-consultant reasonable advance notice of intended audits.
- D. *Engineer* and sub-consultant agree to photocopy such documents as may be requested by *County*. *County* agrees to reimburse *Engineer* for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

Section XI
Miscellaneous

- A. *Severability*. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be limited to the clause, sentence, provision, paragraph or article so held to be invalid, illegal, or ineffective.
- B. *Venue*. It is contemplated that this Agreement shall be performed in Hays County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Hays County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

- C. **Equal Opportunity in Employment.** *Engineer* agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit VI, which is attached hereto and made a part hereof.
- D. **Certificate of Engineer.** *Engineer* certifies that neither *Engineer* nor any members of *Engineer's* firm has:
- (1) Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bonafide employee working solely for *Engineer*) to solicit or secure the work provided by the Agreement.
 - (2) Agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
 - (3) Paid or agreed to pay to any firm, organization, or person (other than bonafide employees working solely for *Engineer*) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.

Engineer further agrees that this certification may be furnished to any local, state or federal governmental agencies in connection with this Agreement and for those portions of the **Project** involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.

- E. **Notice.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

ENGINEER:	<u>Jeff P. Collins</u>
_____ Kenneth G. Schrock, PE	
	<u>LJA Engineering, Inc.</u>
	<u>5316 Highway 290 West, Suite 150</u>
	<u>Austin, TX 78735</u>

COUNTY: Hays County Judge
 111 E. San Antonio Street
 Suite 300
 San Marcos, Texas 78666
 Attn: Judge Liz Sumter (or successor)

with copy to: Hays County District Attorney – Civil Division Chief

111 E. San Antonio, Suite 204
San Marcos, Texas 78666
Attn: Mark Kennedy (or successor)

and to: Prime Strategies, Inc.
1508 South Lamar Blvd.
Austin, Texas 78704
Attn: Michael Weaver

and to: [Hays County Designee]

- F. **Insurance Requirements.** *Engineer* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VII, which is attached hereto and made a part hereof.
- G. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent *County* becomes aware that *Engineer* is delinquent in the payment of property taxes related to property located in Hays County at the time of invoicing, *Engineer* hereby assigns any payments to be made for services rendered hereunder to the Hays County Tax Assessor-Collector for the payment of said delinquent taxes. Notwithstanding the above, *County* shall not have an affirmative duty to determine if *Engineer* is delinquent in the payment of property taxes.
- H. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of *County* and *Engineer* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Engineer* may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- I. **Bidding Exemption.** This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.
- J. **Taxpayer Identification.** *Engineer* shall provide to *County Designee* upon submittal of *Engineer's* initial invoice requesting payment Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations.
- K. **Compliance with Laws.** *Engineer* shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary

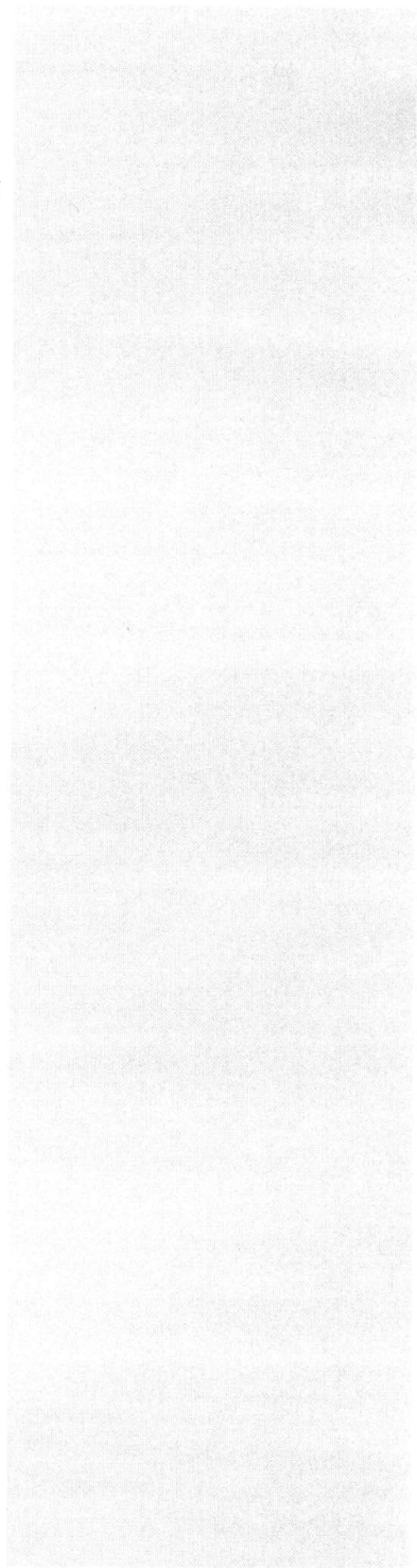
and wage statutes and regulations, licensing laws and regulations. When required, the **Engineer** shall furnish the **County** with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

- L. **Reports of Accidents.** Within 24 hours after **Engineer** becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the **Engineer**), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Agreement, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Agreement.
- M. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between **County** and **Engineer** and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both **County** and **Engineer**. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS COURT.
- N. **Captions Not a Part Hereof.** The captions or subtitles of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- O. **Incorporation of Exhibits and Attachments.** All of the Exhibits and Attachments, and Appendices referred to in the Agreement are incorporated by reference as if set forth verbatim herein.
- P. **Entity Status.** By my signature below, I certify that **Engineer** is a Registered Licensed Professional Engineer, duly authorized to transact and do business in the State of Texas.
- Q. **Acknowledgement.** As a duly authorized representative of **Engineer**, I acknowledge by my signature below that I have read and understand the above paragraphs and that **Engineer** has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.
- R. **Definition of Engineer.** The term "Engineer" as used herein is defined as including Registered Professional Surveyors, as applicable to the work to be performed under this Agreement, and any reference to professional standards in regards to a Registered

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Professional Surveyor shall relate to those standards promulgated by the State Board of Registered Professional Surveyors.



EXECUTED this _____ day of _____, 200__.

THE ENGINEER:

HAYS COUNTY:

BY: _____

BY: _____

Printed Name: Jeff P. Collins

Kenneth G. Schrock, PE

Hays County Judge

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Title: _____ Executive _____ Vice _____ President _____ Transportation _____ Manager _____

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Reviewed as to Form By: _____

County Attorney

Funds Verified By: _____

County Auditor

EXHIBIT I

COMPENSATION FOR PROFESSIONAL SERVICES

ACTUAL COST OF SERVICES METHOD

[Note: A separate Compensation Agreement will be attached for Compensation on a Work-Order Basis]

SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The not-to-be-exceeded fee for the performance of the Scope of Services described in the Agreement shall be the sum of \$ 2,133,062.00.
- 1.2 The basis of compensation for the services of principals and employees engaged in the performance of the work shall be the hourly rates set forth in attached Exhibit II.
- 1.3 *Engineer* shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement at the *Engineer's* invoice cost.

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SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 *Engineer* and *County* acknowledge the fact that the not-to-be-exceeded fee is the total estimated costs of services to be rendered under this Agreement. This not-to-be-exceeded fee is based upon the labor and non-labor costs set forth in Exhibit II to this Agreement and described above, estimated to be required in the performance of the various phases of work provided for under this Agreement. Should the actual costs of the services rendered under this Agreement be less than such estimated cost, then *Engineer* shall receive compensation for only those services actually rendered.

SECTION 3 - WORK AUTHORIZATIONS

- 3.1 *County* will prepare and issue Work Authorizations, in the form identified and attached hereto as Attachment A to authorize the *Engineer* to perform one or more tasks. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, and a fee amount agreed upon by the *County* and *Engineer*. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the *Engineer's* responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.
- 3.2 Work included in a Work Authorization shall not begin until *County* and *Engineer* have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization. The *Engineer* shall promptly notify the *County* of any event which will affect completion of the Work Authorization, although such notification

shall not relieve the **Engineer** from costs or liabilities resulting from delays in completion of the Work Authorization. Any changes in the Work Authorization shall be enacted by a written Supplemental Work Authorization before additional work may be performed or additional costs incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization. The **Engineer** shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a Supplemental Work Authorization.

SECTION 4 - ADDITIONAL SERVICES

- 4.1 For additional services, compensation shall be negotiated in accordance with Exhibit III.
- 4.2 **Engineer** shall be compensated for extra services not included in the Scope of Services described in the Agreement on the basis specified in Exhibit III; however, **Engineer** shall not be compensated for work made necessary by **Engineer's** negligent errors or omissions.
- 4.3 The maximum amount payable under this Agreement without modification (the "**Compensation Cap**") is \$ 2,133,062.00, provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the **Compensation Cap**.

SECTION 5 – REQUIRED SUPPORTING DOCUMENTATION

- 5.1 Upon submittal of the initial invoice for service, **Engineer** shall provide **the Hays County Auditor** with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.
- 5.2 All invoices submitted to **the Hays County Auditor** will be accompanied by an original, complete packet of supporting documentation. Invoices should detail hours worked by staff person, with a description of the work performed by individuals. Invoices should also contain a representation of the percentage of completion relative to that segment of the **Project**.
- 5.3 For additional services performed pursuant to Section III B of this Agreement, a separate invoice or itemization of this work will be presented with the same requirements for supporting documentation as in Section 5.2 of this Exhibit.
- 5.4 Invoices requesting reimbursement for expenditures related to the project (reimbursables) must be accompanied by copies of the provider's invoice which was previously paid by **Engineer**.

ATTACHMENT A

WORK AUTHORIZATION NO. TEMPLATE

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This Work Authorization is made pursuant to the terms and conditions of the Agreement entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (*the "County"*) and LJA Engineering, Inc. (*the "Engineer"*).

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

Part 2. The maximum amount payable for services under this Work Authorization without modification is \$990,867.00.

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

Part 4. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on _____, unless extended by a Supplemental Work Authorization.

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

ATTACHMENT A (con't.)

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

ENGINEER:
LJA Engineering, Inc.

COUNTY:
Hays County, Texas

By: _____
Signature

By: _____
Signature

Kenneth G. Schroek _____
Printed Name

Jeff P. Collins, PE _____
Printed Name

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Transportation Manager _____
Title

Executive Vice President _____
Title

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Date

Date

LIST OF EXHIBITS

- Exhibit A - Services to be Provided by County
- Exhibit B - Services to be Provided by Engineer
- Exhibit C - Work Schedule
- Exhibit D - Fee Schedule

EXHIBIT II
HOURLY RATES

1. Senior Project Manager Engineer.....	\$ 215.00
2. Senior Engineer	\$ 175.00
3. Project Engineer	\$ 145.00
4. Graduate Engineer.....	\$ 130.00
35. Senior Engineering Technician.....	\$ 100.00
6. CADD Operator	\$ 80.00
4. Secretary/Clerical.....	\$ 70.00
5. Expert Witness Testimony.....	\$ _____

EXHIBIT III

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

1. The fees described in Exhibits I and II to this Agreement shall provide compensation to *Engineer* for the work described in the Basic Scope of Services of the Agreement.
2. For the performance of work not described in the Basic Scope of Services of the Agreement, *County* shall pay and *Engineer* shall receive, under a negotiated contract modification, compensation based upon the method and rates set forth in Exhibits I and II to the Agreement.
3. The performance of any additional services must be authorized in writing in advance by the *Hays County Commissioners Court*.
4. In the event of any dispute over the classification of *Engineer's* services as either basic or additional services, the decision of the *Hays County Commissioners Court* shall be final and binding.

EXHIBIT IV

PRODUCTION SCHEDULE

This Agreement shall become effective upon the date approved by *County* and will remain in full force and effect for the period required for the design, construction contract award and construction of the *Project*, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. *Engineer* shall complete all design work as described in the Scope of Services within the timeline and/or schedule provided in the Scope of Services.

The number of days expiring from the date of submittal to *County* of a complete work product to the date the review is finished and comments returned to *Engineer* shall not be included within the days allowed for completion.

EXHIBIT V

PROCEDURES FOR TERMINATION OR SUSPENSION

Procedures for *Engineer* to follow upon receipt of Notice of Termination:

1. Upon receipt of a Notice of Termination and prior to the effective date of the termination, *Engineer* shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of the Notice of Termination *Engineer* shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of termination shall be delivered to *County* as a pre-condition to final payment.
3. Upon the above conditions being met, *County* shall pay *Engineer* for approved services actually performed under this Agreement, less previous payments.
4. Failure by *Engineer* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Engineer* of any and all rights or claims to collect the fee that *Engineer* may rightfully be entitled to for services performed under this Agreement.

Procedures for *Engineer* to follow upon receipt of Notice of Suspension:

1. Upon receipt of a Notice of Suspension and prior to the effective date of the suspension, *Engineer* shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the effective date of suspension. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to *County*, but shall be retained by *Engineer* unless requested by *County*.
2. During the period of suspension, *Engineer* may submit the above-referenced statement to *County* for payment of the approved services actually performed under this Agreement, less previous payments.

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

1. In the event that *Engineer* exercises such right to terminate, within thirty (30) days after receipt by *County* of *Engineer's* Notice of Termination, *Engineer* shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed reports, designs, plans, studies, specifications and other work product shall be delivered to *County* as a pre-condition to final payment. Upon the above conditions being met, *County* shall pay *Engineer* for approved services actually performed under this Agreement, less previous payments.
3. Failure by *Engineer* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Engineer* of any and all rights or claims to collect the fee that *Engineer* may rightfully be entitled to for services performed under this Agreement.

EXHIBIT VI

EQUAL OPPORTUNITY IN EMPLOYMENT

- A. **Engineer** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. **Engineer** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. **Engineer** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. **Engineer** will, in all solicitations or advertisements for employees placed by or on behalf of **Engineer**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Engineer** will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of **Engineer's** obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. **Engineer** will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor.
- E. **Engineer** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of **Engineer's** non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and **Engineer** may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. **Engineer** will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September

24, 1965, as amended by Executive Order 11375 (41 CFR 60), so that such provisions will be binding upon each subcontractor or vendor. **Engineer** will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance: provided, however, that in the event **Engineer** becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by **County** or Federal Agency, **Engineer** may request **County** and United States to enter into such litigation to protect the interest of the United States.

EXHIBIT VII

INSURANCE REQUIREMENTS

During the life of this Agreement, **Engineer** agrees to provide and maintain the following insurance:

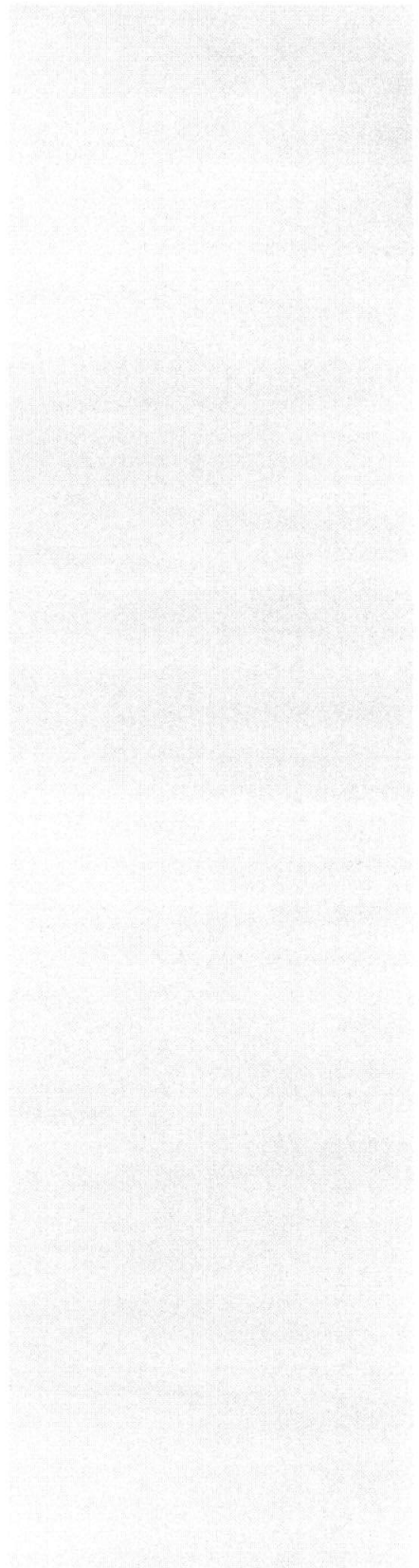
- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$ 1,000,000.00 per occurrence and \$ 2,000,000.00 in the aggregate, including coverage on same for independent subcontractor(s). HAYS COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$ 1,000,000.00 per occurrence and \$ 1,000,000.00 in the aggregate. **Engineer** shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$ 1,000,000.00.
- E. In the event **Engineer** is self-insured in connection with any or all of the above-required insurance policies, **Engineer** shall submit proof of such self-insurance and all financial statements as reasonably required by the **County** in order to determine the acceptability of such self-insurance.

Engineer shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance or self-insurance has been approved by **County**. **Engineer** shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved. Approval of the insurance by **County** shall not relieve or decrease the liability of **Engineer** hereunder.

The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. **Engineer** shall furnish **County** with a certification of coverage issued by the insurer. **Engineer** shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

It is the intention of the **County** and the **Hays County Commissioners Court**, and agreed to and hereby acknowledged by the **Engineer**, that no provision of this Professional Services Agreement shall be construed to require the **County** or **any agent of Hays County** to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as

specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required under this Exhibit which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.



APPENDIX A

SCOPE OF SERVICES

THE ATTACHED SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE HAYS COUNTY PROFESSIONAL SERVICES AGREEMENT. TO THE EXTENT THE SCOPE IS INCONSISTENT WITH THE PROFESSIONAL SERVICES AGREEMENT, THE PROFESSIONAL SERVICES AGREEMENT WILL SUPERSEDE THE SCOPE AND WILL BE CONTROLLING.

THE ENGINEER SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE ENGINEERING PROFESSIONAL TO BE DETERMINED BY COUNTY AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN EXHIBIT II.

EXCEPT AS PROVIDED FOR FEE SERVICES OR WORK-ORDER BASED SERVICES, THE ATTACHED SCOPE OF SERVICES SHALL INCLUDE A PRODUCTION SCHEDULE REFLECTING A TIMELINE FOR THE EXECUTION OF THE PROJECT.

THE COUNTY DESIGNEE THAT SHALL BE THE PRIMARY POINT OF CONTACT UNDER THIS AGREEMENT SHALL BE _____.

APPENDIX B

CONTRACTOR'S QUALIFICATIONS STATEMENT

