

December 4, 2024
Proposal No.: P24-140

Lajuan Harris
Galveston Cty
722 Moody Avenue Second Floor
Galveston, Texas 77550
281.384.9578

**Construction Materials Testing Proposal for
Galveston County Mental Health Wellness Center
1207 Oak St
La Marque, TX 77568**

Thank you for the opportunity to submit this construction materials testing proposal. This testing proposal presents our scope of services, unit rates, and **estimated cost of services**. The documentation available to develop this proposal was the supplied drawings, geotechnical report, and specifications. Please refer to the included Description of Services for scope details.

Project Description

The project consists of the construction/renovation of a 21,000 sq ft building with one additional building with structural paving, concrete paving and associated site work.

Estimate Cost of Services

We estimate the cost of services listed below to be \$24,773, as shown on the following cost summary and the enclosed Description and Estimated Cost of Services. This is not a lump sum estimate. **THE ACTUAL COST OF OUR SERVICES IS DEPENDENT ON THE SCOPE OF SERVICES ACTUALLY REQUESTED AS WELL AS THE CONTRACTOR'S SCHEDULE AND EFFICIENCY. THEREFORE, WE WILL ONLY CHARGE FOR THE ACTUAL SERVICES PERFORMED AT THE APPLICABLE RATE.**

Earthwork Monitoring and Testing	\$13,455
Concrete Monitoring and Testing	\$ 6,416
Masonry Monitoring and Testing	\$ 742
Structural Steel Inspection	\$ 560
Project Management	\$ 3,600

Proposal Acceptance

If this proposal is acceptable, please sign this proposal and/or issue the standard PO for our services. Your signature on this proposal authorizes our services and indicates your acceptance of the proposed scope and cost estimate. The construction schedule was not provided at the time of the submission.

Closing

Again, we appreciate the opportunity to work with you. If you need any additional information, please call.

Sincerely,

CMT Technical Services
Formerly Paradigm Consultants, Inc.

A handwritten signature in black ink, appearing to read "Richard Alicea".

Richard Alicea
Senior Project Manager

A handwritten signature in blue ink, appearing to read "Aaron Kennedy".

Aaron Kennedy
Senior Project Manager

Enc. Estimated Cost of Services
Description of Services

Assumptions

- 3hr per day for concrete sample pickups on days when no other work may occur.
- No stand-by time, overtime, or re-testing was assumed in this proposal.
- Any variation in these assumptions will alter the cost of material testing, and a financial discrepancy report will be provided.
- One Project Manager's hour will be charged for every eight technician hours.

EARTHWORK MONITORING AND TESTING

Representative samples of general area fill, structural fill, utility trench fill, and stabilized subgrade will be obtained and tested in the laboratory. The soils will be verified for specification compliance, and the optimum moisture/maximum dry density relations will be determined. The technician will also perform periodic field density testing of utility trench fill, structural fill, and stabilized subgrade. We will also obtain periodic production samples to determine if the material meets project specifications.

CONCRETE MONITORING AND TESTING

An engineering technician will perform the monitoring and testing of the fresh concrete. The technician will also mold standard test cylinders during the concrete placement, pick up the specimens in the field, and deliver them to our laboratory to test for strength specification compliance. We will cast a set of four (4) cylinders for every 100 cubic yards of structural concrete and 100 cubic yards for paving placed each day.

LABORATORY TESTING

One cylinder will be tested on seven (7) days, two at twenty-eight (28) days, and one at fifty-six (56) days to determine compressive strength. We will provide sample curing and testing in accordance with standard procedures. We will report the test results of cylinders cast in connection with field inspection.

REINFORCING STEEL PLACEMENT INSPECTION

An engineering technician will review the reinforcing steel placement before structural concrete placements to determine compliance with project documents and referenced standards when requested. He will notify the contractor of any deficiencies to allow for correction before concrete placement. A formal report on our field activities will be issued.

STRUCTURAL STEEL INSPECTION

A Certified Welding Inspector will provide a visual inspection of 100% of the field welds to determine compliance with applicable American Welding Society (AWS) D1.1 requirement. A daily report will be submitted outlining the areas inspected and identifying welds which may fail to meet the AWS code. If necessary, a Certified Ultrasonic Inspector will perform an ultrasonic inspection of all full penetration welds and submit appropriate reports.

MASONRY INSPECTION

An engineering technician will provide full-time masonry inspection as outlined in the General Notes of the project drawings. The technician will verify reinforcing placement, grout placement in the appropriate cells, cast mortar cubes, and grout samples.

PROJECT MANAGEMENT

The Project Manager will process and submit technical reports to team members in a timely manner. The Project Manager will also attend progress meetings when testing is a regular discussion topic and any special meetings required. The Project Manager will communicate immediately with the appropriate project team members if tests or inspections fail to meet specifications and assist with an efficient resolution.

NOTES:

1. A minimum of 4 hours will be invoiced for each trip.
2. Unless otherwise noted in the proposal, overtime for non-engineering personnel will be charged at 1.5 times the personnel rates. Overtime will be applicable for all hours before 6:00 a.m. and after 5:00 p.m., all hours over 8 hours per day, Monday through Friday, and all hours worked on weekends and holidays, unless otherwise agreed upon. Expedited laboratory testing, which requires overtime to meet the construction schedule or contractor's request, will be charged at 1.5 times the listed rates.
3. Project management will be invoiced every month at a rate of one hour for every eight hours of field services provided. In addition, we will also invoice the Project Manager's time for meetings, site visits, and consultation.
4. Rates for field representatives and transportation charges are invoiced on a portal-to-portal basis.
5. A minimum of 24 hours advance notice is requested for scheduling or canceling field representatives or testing services. Work scheduled with less than 24 hours' notice will be serviced subject to available personnel. Work canceled with less than 4 hours' notice may be subject to the minimum charge if a field representative has been dispatched to the field.
6. Expenses such as consultant costs, delivery services, equipment rental, reproduction, subcontractor services, supplies, and travel, including airfare, car rental, and lodging, will be invoiced at Cost + 15%.
7. Invoices will be submitted monthly for work in progress and are due and payable upon receipt. Invoices not paid within 30 days of the invoice date will be subject to 1.5% interest per month.

Earthwork Monitoring and Testing	Est. Quan.	Unit	Rate	Amount	Phase Total
Atterberg Limits	1	Each	\$60.00	\$60.00	
Moisture/Density Relation - Standard	1	Each	\$200.00	\$200.00	
Lime Determination (PI Method)	1	Each	\$315.00	\$315.00	
Field Technician, RT	160	Hour	\$58.00	\$9,280.00	
Nuclear Density Device	40	Day	\$30.00	\$1,200.00	
Vehicle Charge	40	Trip	\$60.00	\$2,400.00	
Earthwork Subtotal					\$13,455.00
Concrete Monitoring and Testing	Est. Quan.	Unit	Rate	Amount	Phase Total
Field Technician, RT	74	Hour	\$58.00	\$4,292.00	
Compressive Strength Cylinders	58	Each	\$18.00	\$1,044.00	
Vehicle Charge	18	Trip	\$60.00	\$1,080.00	
Concrete Subtotal					\$6,416.00
Structural Steel Weld/Bolt Inspection	Est. Quan.	Unit	Rate	Amount	Phase Total
Welding Inspector, RT	4	Hour	\$125.00	\$500.00	
Vehicle Charge	1	Trip	\$60.00	\$60.00	
Structural Subtotal					\$560.00
Masonry Monitoring and Testing	Est. Quan.	Unit	Rate	Amount	Phase Total
Field Technician, RT	4	Hour	\$58.00	\$232.00	
Comp Strength Masonry Cubes	1	Set of 6	\$150.00	\$150.00	
Comp Strength Grout Prisms	1	Set of 4	\$300.00	\$300.00	
Vehicle Charge	1	Trip	\$60.00	\$60.00	
Masonry Subtotal					\$742.00
Project Management	Est. Quan.	Unit	Rate	Amount	Phase Total
Project Manager	30	Hour	\$120.00	\$3,600.00	
Project Management Subtotal					\$3,600.00

TOTAL ESTIMATED TESTING COST
\$24,773.00

AGREEMENT FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

THIS AGREEMENT, effective as of this 4th day of December 2024, is by and between **Galveston County** ("CLIENT") and **CMT Technical Services** (Formerly Paradigm Consultants) ("CONSULTANT").

THE PROJECT is generally described as:

Galveston County Mental Health Wellness Center


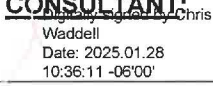
and is located at: 1207 Oak St, La Marque, TX, 77568 ("Project Site").

THIS AGREEMENT consists of the following documents, which are incorporated herein by reference:

- GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES;
- CONSULTANT's SCOPE OF SERVICES AND SCHEDULE OF FEES for the Project (Exhibit A); and
- Any documents specifically listed below or incorporated by reference in the listed documents.

P24-140

CONSULTANT agrees to perform the services set forth in this AGREEMENT according to its terms, including all attachments expressly incorporated herein by reference. This AGREEMENT may be modified or altered, only in writing as specifically described in this AGREEMENT.

	CLIENT:	CONSULTANT:
Signature:		 <small>Digitally signed by Chris Waddell Date: 2025.01.28 10:36:11 -06'00'</small>
Print Name:	<u>Mark Henry</u>	<u>Chris Waddell</u>
Title:	<u>County Judge</u>	<u>Regional Manager, Texas Division</u>
Company:	<u>Galveston County</u>	<u>CMT Technical Services (Formerly Paradigm)</u>
Address:	<u>722 Moody Ave., 2nd Fl</u> <u>Galveston, Texas 77550</u>	<u>9980 W. Sam Houston Pkwy. S., Ste.500</u> <u>Houston, Texas 77099</u>
Date:	<u>February 3, 2025</u>	
Phone No.:	<u>(409) 766-2244</u>	<u>(713) 686.6771</u>
Email Address:	<u></u>	<u></u>
Accounts Payable Contact:	<u></u>	
Email:	<u></u>	

GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

1. DEFINITIONS

1.1. Constructor - the managing general constructor and other constructor(s), including its/their subcontracting constructors (**subcontractors**) of every tier, retained to perform construction **work** on the **project** for which CONSULTANT is providing **services** under this AGREEMENT.

1.2. CONSULTANT Entities - the CONSULTANT and its subconsultants, subcontractors, and agents, and all of their respective shareholders, directors, officers, employees, and agents, and their heirs and assigns.

1.3. Day(s) - calendar day(s) unless otherwise stated.

1.4. Hazardous Materials - any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. **Hazardous materials** include, but are not limited to, those substances defined, designated, or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollution.

1.5. Inspect, Inspection - to visually assess (or the act of visual assessment), commonly in combination with measurement or testing, according to prescribed standard method(s), the conformance of materials or constructed activities with specified requirements.

1.6. Instruments of Professional Service - all documents and correspondence - e.g., reports, letters, emails, memoranda, notes, boring logs, sketches, and field and laboratory data and reports - regardless of form - prepared by CONSULTANT.

1.7. Observe, Observation - to visually evaluate (or the act of visual evaluation) to allow the formation of a professional judgment or opinion relative to general conformance with requirements

1.8. Plans and Specifications - the plans and specifications for the **work** to be performed, including any addenda, amendment, or supplement thereof, that are approved by the authority having jurisdiction over the construction of the Project.

1.9. Project - the construction project on which the Work is or is to be performed.

1.10. Services - the **services** provided by CONSULTANT under this AGREEMENT or in connection with the Project, including all engineering, **observation, inspection, and testing services** described in Exhibit A, and any written task order or amendment to this AGREEMENT.

1.11. Test, Testing - a qualitative or quantitative procedure used to determine one or more characteristics of a given material or constructed activity according to a prescribed standard method to establish the conformance of the material or constructed activity with specified requirements.

1.12. Work - the labor, materials, equipment, services, and constructed results of **Constructor**.

2. ACCEPTANCE OF TERMS AND CONDITIONS

Unless otherwise specifically stated by CLIENT in writing, CLIENT's request that CONSULTANT initiate **Services** will constitute CLIENT's acceptance of this AGREEMENT and all of its terms and conditions. Any such terms proposed by CLIENT, whether by offer or acceptance, shall be void unless CONSULTANT expressly agrees to them in writing.

3. SCOPE OF SERVICES

3.1. Services Provided; Independent Contractor. CONSULTANT will provide the **Services** set forth in the attached SCOPE OF SERVICES (Exhibit A) as an independent contractor.

3.2. Authority of CONSULTANT. CONSULTANT will report to CLIENT data and results of **observation, inspection, and testing** as set forth in Exhibit A. CONSULTANT will report to CLIENT or CLIENT's representative observed or inspected **Work** which, in CONSULTANT's opinion, does not conform with **Project** plans and specifications. CONSULTANT is not responsible for inspecting the **Project**. CONSULTANT has no right or responsibility to approve, accept, reject, or stop **Work** of any agent of CLIENT. No action of CONSULTANT or CONSULTANT's site representative(s) shall be construed by any party as revoking, altering, enlarging, relaxing, or releasing any requirement of the plans, specifications, and codes applicable to the **Project** or any agreement between the CLIENT and others. Such rights are reserved solely for the CLIENT.

3.3. Scheduling and Frequency of Observations, Inspections, and Testing. CONSULTANT has been retained to make periodic observations and inspections of the **Work** as provided in Exhibit A. CLIENT acknowledges that CLIENT – directly or by CLIENT's designee – has the sole right and sole responsibility to determine the extent, frequency, and scheduling of observations, inspections, and testing performed by CONSULTANT. Accordingly, CLIENT also acknowledges that CONSULTANT bears no responsibility for non-compliant **Work** or damages that may accrue because CONSULTANT did not perform **observations, inspections, or testing** that are not required in Exhibit A or that CLIENT failed to request or schedule.

3.4. Variation of Material Characteristics and Construction Conditions. CONSULTANT's **observations** and standardized sampling, **inspection**, and **testing** procedures are intended to indicate material characteristics and conditions of **observed, inspected, or tested** construction activities only at the precise locations, elevations or depths, and times when CONSULTANT performed the **Services**. CLIENT recognizes that material characteristics and conditions of construction activities performed at other locations within the **Project** or times may vary from those measured, **observed, or inspected** and that conditions at one location and time cannot be relied on to indicate the conditions at other locations and times, even when the material characteristics and conditions of construction activities involved appear to be identical. Even if performed during all times when the **Work** is in progress, CONSULTANT's **Services** do not constitute and should not be interpreted to mean that CONSULTANT is **observing, inspecting, or testing** all materials or construction activities on the **Project**. CONSULTANT is responsible only for those data, interpretations, and recommendations about the actual material characteristics and condition of construction activities it **observes, samples, inspects, or tests**, and is not responsible for other parties' interpretations or use of the information developed.

3.5. Professional Opinions. CONSULTANT may make inferences based upon the information derived from CONSULTANT's **Services** to formulate professional opinions about conditions in other areas. CLIENT recognizes that, despite proper application and implementation of **observation** and/or sampling, **inspection, or testing** procedures and despite proper interpretation of the findings, CONSULTANT will perform its **Services** according to the **Standard of Care** but will not be in a position to and does not ensure the existence of any conditions that CONSULTANT can only infer to exist.

3.6. Changes in Scope. CLIENT may request changes in the SCOPE OF SERVICES (Exhibit A). Any such changes, including any change in CONSULTANT's compensation or time of performance, which are mutually agreed upon by CONSULTANT and CLIENT, will be incorporated in written amendments to this AGREEMENT. No change will be effective unless it is in writing and signed by CLIENT and CONSULTANT, or if made orally, confirmed by the parties in writing within ten (10) days of the date of the oral agreement.

3.7. Excluded Services. CONSULTANT's **Services** under this AGREEMENT include only those **Services** specified in the SCOPE OF SERVICES (Exhibit A). CLIENT expressly waives any claim against CONSULTANT relating to any additional services that CONSULTANT recommended, but that CLIENT either did not authorize or instructed CONSULTANT to not perform.

3.8. No Fiduciary Responsibility. No fiduciary responsibility to CLIENT by CONSULTANT or to CONSULTANT by CLIENT exists, is created by this AGREEMENT, or shall arise from the **Services**.

4. PAYMENTS TO CONSULTANT

4.1. Basic Services. CONSULTANT will perform **Services** for the amount(s) set forth set forth in the SCHEDULE OF FEES (Exhibit A).

4.2. Additional Services; Retesting. Any **Services** CONSULTANT performs under this AGREEMENT, except those **Services** expressly identified otherwise in the attached SCOPE OF SERVICES (Exhibit A), will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties. In the event that CONSULTANT's **Services** disclose **Work** that is not in accordance with construction **Plans and Specifications** applicable to the **Project**, which consequently will require corrections, CONSULTANT will retest, reinspect, or re-monitor as required by this AGREEMENT or as directed by CLIENT's representative. **Additional Services** may be required for other reasons that may arise during the Project. Such retesting, reinspection, or re-monitoring shall be considered **Additional Services** and CONSULTANT shall be paid by CLIENT for any such **Additional Services** in addition to compensation owed for any prior Scope of Services.

4.3. Estimate of Fees and Expenses. CONSULTANT will endeavor to perform the **Services** and accomplish the objectives defined in this AGREEMENT within any written cost estimate provided by CONSULTANT. CLIENT recognizes that unforeseen circumstances, including scope and schedule changes, can affect CONSULTANT's ability to complete its **Services** within the estimated cost. Accordingly, CLIENT agrees that a cost estimate of fees or a "not to exceed" limitation indicates only that CONSULTANT will not incur costs in excess of the estimate or limitation amount without first obtaining CLIENT's agreement to do so but is not a guarantee that the **Services** will be completed for that amount.

4.4. Rates. CLIENT will pay CONSULTANT at the rates set forth in the SCHEDULE OF FEES in Exhibit A, which is subject to periodic review and amendment, as appropriate to reflect CONSULTANT's then-current fee structure.

4.5. Payment Timing; Late Charge. CONSULTANT will submit invoices to CLIENT periodically, but no more frequently than every fourteen (14) days. All invoices are due and payable upon presentation, regardless of when or if CLIENT is paid by any third party. Invoicing, payments, disputes and interest shall be governed by the Prompt Payment Act, Tex. Gov't Code Ch. 2251.

5. PERFORMANCE STANDARD

5.1. Professional Standards. CONSULTANT will perform the **Services** under this AGREEMENT or any other services it provides on the **Project** consistent with that level of care and skill ordinarily exercised by other similarly credentialed professionals providing similar **Services**, under similar circumstances and in the same locale, at the time the **Services** are performed (the "**Standard of Care**"). No warranty or guarantee, express or implied, is included in or intended by this AGREEMENT or by any report, opinion, document, or other Instrument of **Service**. CONSULTANT disclaims any implied warranties or warranties imposed by law, including warranties of merchantability and fitness for a particular purpose.

5.2. Compliance with Codes and Referenced Standards. As required by the applicable **Standard of Care**, CONSULTANT will perform its **Services** in accordance with standards, statutes, and regulations applicable to CONSULTANT's **Services** when CONSULTANT prepared the SCOPE OF SERVICES (Exhibit A). CONSULTANT will perform its **observations, inspections, and tests** in general accordance with the **Standard of Care** and any specific standards expressly referenced by CONSULTANT in its **Instruments of Professional Service** and will maintain all licenses and permits necessary to conduct its business and perform its obligations under this AGREEMENT. CONSULTANT makes no representation about compliance with any standard it does not expressly reference as applicable to its **Services**.

5.3. Sampling, Observation, Inspection and Test Locations. Unless specifically stated otherwise, the SCOPE OF SERVICES (Exhibit A) intentionally excludes surveying the **Project or Project site** or precisely identifying sampling, **observation, inspection, or test** locations, depths, or elevations. In accordance with customary practice, CONSULTANT will base sampling, **observation, inspection, and test** locations, depths, and elevations on field estimates and information furnished by CLIENT and its representatives. Unless stated otherwise in CONSULTANT's report(s), such locations, depths, and elevations are approximate.

5.4. Sample Disposal. CONSULTANT will dispose of samples immediately after submitting the report covering those samples. If CLIENT prefers CONSULTANT to store samples for a longer period or transfer them to another party, CLIENT shall submit to CONSULTANT a timely written notice through which CLIENT also agrees to appropriately compensate CONSULTANT for **Additional Services** for such storage and transportation.

5.5. Concealed Conditions; Property/Work Restoration. If the **Services** require coring, borings, test pits, or other invasive sampling or exploratory **Services**, CLIENT will provide CONSULTANT with all information in its possession regarding the location of utilities, structures, structural elements and reinforcement, and all other features (collectively "**Features**") that may not be readily apparent by visual observation. CONSULTANT shall be entitled to rely on the completeness and accuracy of CLIENT-furnished information about **Features** and shall take into consideration the locations of **Features** identified by CLIENT to CONSULTANT in such material or otherwise. If appropriate, CONSULTANT will contact a utility locator to identify underground utilities. CLIENT agrees to hold CONSULTANT harmless for any damage to utilities or any other **Features** not identified to CONSULTANT by CLIENT or that are incorrectly shown on plans or drawings furnished for the purpose of locating such **Features**. CONSULTANT will take

reasonable precautions to limit damage to the **Project site** or **work** due to the performance of **Services**. CLIENT understands that some sampling and **testing** activities are destructive, and damage may necessarily occur in the normal course of performing **Services**. This AGREEMENT excludes repair of such damage unless specifically included in the SCOPE OF SERVICES (EXHIBIT A), or in an amendment to this AGREEMENT.

6. CONSTRUCTOR'S PERFORMANCE

CONSULTANT is not responsible for any Constructors' means, methods, techniques, or sequences, or for any necessary safety programs or precautions, during the performance of any **Constructors' Work** at the **Project site**. CONSULTANT will not supervise, direct, or control the **Constructor's Work**, nor be liable for failure of any **Constructor** to complete its **Work** in accordance with the **Project** plans, specifications, applicable codes, laws, and regulations. CLIENT understands and agrees that **constructors**, not CONSULTANT, have sole responsibility for the safety of persons and property at the **Project site**.

7. CLIENT'S RESPONSIBILITIES

In addition to compensating CONSULTANT for the **Services** performed under this AGREEMENT, CLIENT agrees to:

7.1. Access. Grant or obtain free access to the **Project site** for all equipment and personnel necessary for CONSULTANT to perform its **Services** under this AGREEMENT.

7.2. Representative. Designate a representative to serve as CLIENT's primary contact with CONSULTANT for notices and information pertaining to the **Services**, communicate CLIENT's policies and decisions, and assist as necessary in matters pertaining to the **Project** and this AGREEMENT. CLIENT may change its representative by written notice.

7.3. Information. Supply to CONSULTANT all information and documents relevant to the **Services**. CONSULTANT may rely upon the accuracy and completeness of such information without independent verification by CONSULTANT. CLIENT shall notify CONSULTANT of any known potential or possible health or safety hazard existing on or near the **Project site**, with particular reference to hazardous materials or conditions.

7.4. Project Information. Within seven (7) **days** of receiving CONSULTANT's written request to do so, CLIENT shall provide to CONSULTANT a correct statement of the recorded legal title to the property on which the **Project** is located and the CLIENT's and/or owner's interest therein.

8. CHANGED CONDITIONS

CONSULTANT will give to CLIENT written notice of CONSULTANT's discovery of conditions or circumstances CONSULTANT did not contemplate at the time of this AGREEMENT ("Changed Conditions"). CLIENT and CONSULTANT will then negotiate an appropriate amendment to this AGREEMENT, if necessary. If they cannot agree upon an amendment within thirty (30) **days** after CONSULTANT gives notice, CONSULTANT may terminate this AGREEMENT and be compensated as set forth in Section 14, "Suspension & Delay; Termination."

9. CERTIFICATIONS

CLIENT will not require CONSULTANT to execute any certification, agreement, or consent regarding Services performed or Work tested or observed unless: 1) CONSULTANT believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) CONSULTANT believes that the Services performed or Work tested or observed meet the criteria of the certification; and 3) CONSULTANT has reviewed and approved in writing the exact form of such certification prior to execution of this AGREEMENT. Any certification by CONSULTANT is limited to the expression of a professional opinion based upon the Services performed by CONSULTANT, and does not constitute a warranty or guaranty, either express or implied. CONSULTANT shall not be required in any circumstance to execute any certification, agreement, or consent that would require knowledge, services, or responsibilities beyond the scope of this AGREEMENT. CLIENT agrees not to condition the resolution of any dispute upon CONSULTANT signing a certification.

10. ALLOCATION OF RISK

10.1. LIMITATION OF REMEDIES. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO CLIENT AND CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, THAT THE TOTAL CUMULATIVE LIABILITY OF CONSULTANT ENTITIES TO CLIENT ARISING FROM SERVICES UNDER THIS AGREEMENT AND ON THE PROJECT, INCLUDING ANY INDEMNITY OBLIGATION, ANY DEFENSE COSTS AND ATTORNEY'S FEES, AND ANY CONSEQUENTIAL DAMAGES WHICH MAY BE DUE UNDER THIS AGREEMENT, SHALL NOT EXCEED THE GROSS COMPENSATION RECEIVED BY CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS LESS.

10.2. Indemnification of CLIENT. Subject to all otherwise applicable statutes of limitations and repose and the provisions and the terms and limitations of this Agreement, including section 10.1 above, CONSULTANT agrees to indemnify and hold harmless CLIENT, its shareholders, officers, directors, and employees, their heirs and assigns, from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reimbursement of reasonable attorney's fees and defense costs) and other Losses (collectively "Losses") to the extent caused by CONSULTANT's proportional negligence in performance of or failure to perform its services in accordance with this AGREEMENT. With regard to any claim alleging CONSULTANT's negligent performance of professional services, CONSULTANT's defense obligation under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of CONSULTANT's actual indemnity obligation hereunder. The indemnity obligations provided under this indemnity paragraph shall apply only to the extent such Losses are determined by a court of competent jurisdiction to have been caused by the negligence of CONSULTANT.

10.3. No Personal Liability. CLIENT and CONSULTANT intend that CONSULTANT's **Services** will not subject CONSULTANT's individual professionals of record, employees, officers or directors to any personal liability. Therefore, and notwithstanding any other provision of this AGREEMENT, CLIENT agrees as its sole and exclusive remedy to direct or assert any claim, demand, or suit only against the business entity identified as "CONSULTANT" on the first page of this AGREEMENT.

10.4. Consequential Damages. Neither CLIENT nor CONSULTANT will be liable to the other for any special, consequential, incidental, or penal losses or damages including, but not limited to losses, damages, or claims related to: the unavailability of property or facilities; shutdowns or service interruptions; loss of use, profits, revenue, or inventory; or for use charges, capital costs, or the cost of the claims of the other party and/or its customers.

10.6. Deviation from Recommendations. Unless specifically agreed otherwise in writing, CLIENT agrees that CONSULTANT bears no responsibility for ensuring CLIENT's or any other party's compliance with any specifications, procedures, or recommendations provided by CONSULTANT to CLIENT under this AGREEMENT (collectively "**Recommendations**"). CLIENT hereby releases CONSULTANT from all liability arising from any other party's failure to fully comply with **Recommendations**.

10.7. Continuing Agreement. The provisions of this Section 10, "Allocation of Risk," shall survive the expiration or termination of this AGREEMENT. If CONSULTANT provides **Services** to CLIENT that are outside the scope of Exhibit A, which the parties do not confirm through execution of an amendment to this AGREEMENT, the provisions of this Section 10 shall apply to such **Services** as if the parties had executed a written amendment.

11. INSURANCE

11.1. CONSULTANT's Insurance. CONSULTANT will maintain the following coverages:

- 11.1.1. Statutory Workers' Compensation/Employer's Liability Insurance.
- 11.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000.
- 11.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,
- 11.1.4. Professional Liability Insurance in amounts of \$1,000,000 per claim and annual aggregate.

11.3. Certificates of Insurance. Upon request, CONSULTANT and CLIENT will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance.

12. OWNERSHIP AND USE OF CLIENT DOCUMENTS; INSTRUMENTS OF PROFESSIONAL SERVICE

12.1. CLIENT Documents. All documents provided by CLIENT will remain CLIENT's property. CONSULTANT will return all such documents to CLIENT upon request. CLIENT will permit CONSULTANT to make and retain copies of all CLIENT documents.

12.2. Instruments of Professional Service. Instruments of Professional Service prepared by CONSULTANT including, but not limited to reports, boring logs, sketches, field and laboratory data, notes, drawings, are and shall remain CONSULTANT's property and shall not be considered Works Made for Hire. CONSULTANT has the right, in its sole discretion, to dispose of or retain the Instruments of Professional Service.

12.2.1. Used by CLIENT. Upon payment to CONSULTANT all sums due under this Agreement, CONSULTANT grants to CLIENT a limited, non-exclusive, non-transferable license to use the Instruments of Professional Service for the design, construction, maintenance and use of the Project but for no other purpose without the express prior written consent of CONSULTANT. Such license shall terminate upon CLIENT'S breach of this Agreement. CLIENT shall return all copies of the Instruments of Service to CONSULTANT upon the termination of such license.

12.2.2. Use by CONSULTANT. CONSULTANT shall not use CONSULTANT's Instruments of Professional Service for any purpose not expressly permitted by the foregoing license.

12.3. Electronic Media. CONSULTANT will provide CONSULTANT's Instruments of Professional Service and information in an electronic format unless CLIENT requests CONSULTANT provide paper copies. CONSULTANT makes no warranties, either express or implied, regarding the fitness or suitability of any electronic Instrument of Professional Service or media.

12.4. Unauthorized Use. No party other than CLIENT may rely on CONSULTANT's Instruments of Professional Service without CONSULTANT's prior written consent and CONSULTANT's receipt of additional compensation. CLIENT waives any and all claims against CONSULTANT resulting from the unauthorized use or alteration of Instruments of Professional Service by CLIENT or any party obtaining them through CLIENT. **CLIENT'S OBLIGATIONS UNDER THIS SECTION SHALL BE ENFORCEABLE REGARDLESS OF WHETHER CAUSED BY ALLEGED NEGLIGENCE, ERRORS OR OMISSIONS OF CONSULTANT, ITS FAILURE TO MEET THE STANDARD OF CARE OR BREACH OF ANY LEGAL DUTY IN CONSULTANT'S SERVICES, WHETHER ALLEGED TO ARISE IN TORT, CONTRACT, WARRANTY, OR OTHER LEGAL THEORY.**

13. CONFIDENTIALITY

CONSULTANT will hold confidential business or technical information obtained from CLIENT or CLIENT's representative or generated in the performance of the Services under this AGREEMENT and first identified in writing by CLIENT as "confidential." CONSULTANT will not disclose such information without the consent of CLIENT except to the extent required for: 1) performance of Services under this AGREEMENT; 2) compliance with professional or ethical standards of conduct for preservation of public safety, health, and welfare; 3) compliance with the requirements of a third-party independent accreditation body for use in assessing the competence of CONSULTANT; 4) compliance with any court order or other governmental directive; and/or 5) in defense of CONSULTANT against claims or liabilities arising from performance of Services under this AGREEMENT. CONSULTANT's obligation hereunder will not apply to information in the public domain or lawfully acquired from others on a nonconfidential basis. Consultant acknowledges Client is a unit of government subject to the Public Information Act.

14. SUSPENSION & DELAY; TERMINATION

14.1. Suspension & Delay. Upon ten (10) days' written notice to CONSULTANT, CLIENT may suspend CONSULTANT's Services. Upon ten (10) days' written notice to CLIENT, CONSULTANT may terminate this AGREEMENT if CLIENT suspends the Services for more than sixty (60) days, in which case CLIENT shall compensate CONSULTANT as provided in Section 14.4. If CLIENT suspends the Services, or if CLIENT or others delay CONSULTANT's Services, CLIENT and CONSULTANT agree to equitably adjust the time for completion of the Services and CONSULTANT's compensation for the additional labor, equipment, and other expenses associated with maintaining CONSULTANT's workforce for CLIENT's benefit during the delay or suspension, and any expenses incurred by CONSULTANT for demobilization and subsequent remobilization.

14.2. Termination for Convenience. CONSULTANT and CLIENT may terminate this AGREEMENT for convenience upon ten (10) days' written notice delivered or mailed to the other party.

14.3. Termination for Cause. In the event that either party contends that the other party breached this AGREEMENT, the non-breaching party shall deliver to the breaching party a written termination notice that states the basis for the termination. Neither party may terminate this AGREEMENT for cause if the party alleged to have breached cures the alleged breach within ten (10) **days** after receiving the termination notice. The nonbreaching party has the right to terminate this AGREEMENT if the party alleged to have breached fails to cure the breach within the ten (10)-**day** period.

14.4. Payment on Termination. Following termination other than for CONSULTANT's breach of this AGREEMENT, CLIENT shall pay CONSULTANT for the **Services** performed prior to the termination-notice date, and for any necessary **Services** and expenses incurred in connection with the termination, including but not limited to, the costs of completing analyses, records and reports necessary to document **Project** status at the time of termination and costs associated with termination of subconsultant and/or subcontractor contracts in accordance with CONSULTANT's then-current SCHEDULE OF FEES (EXHIBIT A).

14.5. Force Majeure. In the event that CONSULTANT is prevented from completing performance of its obligations under this AGREEMENT by adverse weather or other occurrence beyond the control of CONSULTANT, then CONSULTANT shall be excused from any further performance of its obligations and undertakings. In the event of a *force majeure* delay that does not result in termination of the AGREEMENT, the schedules will be equitably adjusted.

15. DISPUTES

15.1. Mediation and Dispute Resolution. All disputes between CONSULTANT and CLIENT are subject to mediation before either party initiates any other method of dispute resolution. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated.

15.2. Choice of Law; Venue. This AGREEMENT will be construed in accordance with and governed by the laws of the State of Texas.

15.3. Statutes of Limitations. Any cause of action arising out of CONSULTANT's **Services** or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence running on the earlier of the date of substantial completion of CONSULTANT's **Services** under this AGREEMENT or the date on which claimant knew, or should have known, of facts giving rise to its claims.

16. MISCELLANEOUS

16.1. Integration and Severability. This AGREEMENT and all of its attachments reflect the parties' entire agreement with respect to its terms and limitations and supersedes all prior agreements, written and oral. If any portion of this AGREEMENT is found void or voidable, CLIENT and CONSULTANT will consider that portion stricken and will reform the AGREEMENT to achieve as much of the stricken portions' purpose as possible. These terms and conditions survive the completion of the **Services** and the termination of the AGREEMENT, whether for cause or for convenience.

16.2. Modification of this AGREEMENT. This AGREEMENT may be modified or altered only by a written agreement that refers specifically to this AGREEMENT and is signed by authorized representatives of each party.

16.3. Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and delivered to the recipient: 1) in person; 2) by first class, certified mail, postage prepaid to the address of the party specified in this Agreement; or 3) overnight courier; or 4) by electronic mail to the address of the party specified in this Agreement and in a form capable of retention by the recipient at the time of receipt. All notices shall be effective upon either (i) receipt by the party to which notice is given or (ii) on the fifth (5th) **day** following mailing, whichever occurs first.

16.5. Headings. The headings used in this AGREEMENT are for convenience only. They are not a part of this AGREEMENT.

16.6. Waiver. The waiver of any term, condition, or breach of this AGREEMENT will not operate as a subsequent waiver of the same term, condition, or breach.

16.7. Precedence. These GENERAL CONDITIONS take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding CONSULTANT's **Services**.

16.8. Incorporation of Provisions Required by Law. This AGREEMENT includes each provision and clause required by law, and the AGREEMENT should be read and enforced as though each such provision and clause were set forth in its entirety.

End of General Conditions

EXHIBIT A: SCOPE OF SERVICES AND SCHEDULE OF FEES

CONSULTANT's proposal or other description of (1) Scope of Services, and (2) Schedule of Fees for the **Services** covered by this Agreement is either:

- ☐ Listed below; or
☒ Attached in a separate document(s) and/or individual task order(s).

P24-140