

STATE OF TEXAS §
§
COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

(Construction Materials Testing – Project No. 20116)

This Agreement for Professional Engineering Services ("Agreement") is made and entered into by and between Fort Bend County, Texas ("County"), a political subdivision of the state of Texas, and Aviles Engineering Corporation ("Engineer"), a Texas corporation. County and Engineer may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Engineer is a professional engineering firm which provides construction materials testing and inspection services in the Greater Houston Area; and

WHEREAS, County desires for Engineer to provide construction materials testing and inspection services for Stella Road from Cottonwood School Road to W Fairgrounds Road under Mobility Bond Project No. 20116; and

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

WHEREAS, pursuant to the requirements of Chapter 2254 of the Texas Government Code, County has determined that Engineer is the most highly qualified provider of such professional services and the Parties have negotiated a fair and reasonable price for the same; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

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

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Engineer shall render services to County as provided in Engineer's Proposal dated August 21, 2024 attached hereto as "Exhibit A" and incorporated herein by reference (the "Services").

3. **Time for Performance.** Time for performance for the Services provided under this Agreement shall begin with Engineer's receipt of Notice to Proceed and shall end no later than December 31, 2028. Engineer shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by County.

4. **Compensation and Payment Terms.**

Engineer's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Engineer for the Services performed under this Agreement is Two Hundred Forty Four Thousand Nine and 93/100 Dollars (\$244,009.93). In no event shall the amount paid by County to Engineer under this Agreement exceed said Maximum Compensation without an approved change order.

- (a) Engineer understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
- (b) County will pay Engineer based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Engineer shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. Engineer shall submit invoices no more frequently than on a monthly basis. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days.
- (c) Accrual and payment of interest on any overdue payments assessed by Engineer, if any, shall be governed by Chapter 2251 of the Texas Government Code.
- (d) Engineer understands and agrees that County's obligation to make any payment(s) hereunder is dependent upon Engineer's completion of the Services in a timely, good, and professional manner and in accordance with the performance representations made in Section 25 of this Agreement. Therefore, County reserves the right to withhold payment pending verification of satisfactory work performed.

5. **Limit of Appropriation.** Engineer understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is \$244,009.93. In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total

maximum sum of \$244,009.93 specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Engineer does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Engineer may become entitled to and the total maximum sum that County may become liable to pay Engineer under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$244,009.93.

6. **Non-appropriation.** Engineer understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify Engineer in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
7. **Taxes.** Engineer understands and agrees that County is a governmental entity and political subdivision of the state of Texas, and as such, is exempt from payment of any sales and use taxes. County shall furnish evidence of its tax-exempt status upon written request by Engineer.
8. **Insurance.** Prior to commencement of the Services, Engineer shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Engineer shall provide certified copies of insurance endorsements and/or policies if requested by County. Engineer shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Engineer shall obtain such insurance written on an Occurrence form from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - (b) Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - (c) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and

products/completed operations arising out of the business operations of the policyholder.

- (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

County and members of the Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Engineer shall contain a waiver of subrogation in favor of County.

If required coverage is written on a claims-made basis, Engineer warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.

Engineer shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by County.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

Approval of the insurance by County shall not relieve or decrease the liability of the Engineer.

9. **Indemnity. PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER OR ENGINEER'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL. IN ADDITION, HALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.**

ENGINEER SHALL TIMELY REPORT TO COUNTY ALL SUCH MATTERS ARISING UNDER THE INDEMNITY PROVISIONS ABOVE. UPON THE RECEIPT OF ANY CLAIM, DEMAND, SUIT,

ACTION, PROCEEDING, LIEN, OR JUDGMENT, AND NO LATER THAN THE FIFTEENTH DAY OF EACH MONTH, ENGINEER SHALL PROVIDE COUNTY WITH A WRITTEN REPORT ON EACH MATTER, SETTING FORTH THE STATUS OF EACH MATTER, THE SCHEDULE OR PLANNED PROCEEDINGS WITH RESPECT TO EACH MATTER, AND THE COOPERATION OR ASSISTANCE, IF ANY, OF COUNTY REQUIRED BY ENGINEER IN THE DEFENSE OF EACH MATTER. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES AS TO WHETHER A CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT APPEARS TO HAVE BEEN CAUSED BY OR APPEARS TO HAVE ARISEN OUT OF OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER, OR ITS AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL, ENGINEER SHALL, NEVERTHELESS, FULLY DEFEND SUCH CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT UNTIL AND UNLESS THERE IS A DETERMINATION BY A COURT OF COMPETENT JURISDICTION THAT SAID ACTS AND/OR OMISSIONS OF ENGINEER ARE NOT AT ISSUE IN THE MATTER.

THE INDEMNITY PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF CERTIFICATION OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT BY COUNTY, WHETHER IN WHOLE OR IN WHOLE OR IN PART, SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS SECTION.

10. **Public Information Act.** Engineer expressly acknowledges and agrees that County is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall County be liable to Engineer for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, County agrees to maintain the confidentiality of information provided by Engineer expressly marked as proprietary or confidential. County shall not be liable to Engineer for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Engineer further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.
11. **Compliance with Laws.** Engineer shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. Engineer, in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
12. **Independent Contractor.** In the performance of work or services hereunder, Engineer shall be deemed an independent Contractor, and any of its agents, employees, officers,

or volunteers performing work required hereunder shall be deemed solely as employees of Engineer. Engineer and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

13. **Use of Customer Name.** Engineer may use County's name without County's prior written consent only in Engineer's customer lists. Any other use of County's name by Engineer must have the prior written consent of County.
14. **County/County Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
15. **Personnel.** Engineer represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of Engineer who, in County's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, Engineer shall comply with, and will require that all Engineer's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to Engineer in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

16. **Confidential and Proprietary Information.** Engineer acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Engineer or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Engineer shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Engineer) publicly known or is contained in a publicly available document; (b) is rightfully in Engineer's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c)

is independently developed by employees or agents of Engineer who can be shown to have had no access to the Confidential Information.

Engineer agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Engineer uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Engineer shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Engineer shall advise County immediately in the event Engineer learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Engineer will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Engineer against any such person. Engineer agrees that, except as directed by County, Engineer will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Engineer will promptly turn over to County all documents, papers, and other matters in Engineer's possession which embody Confidential Information.

Engineer acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Engineer acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Engineer in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

17. **Ownership and Reuse of Documents.** All work product and data produced or developed under this Agreement by Engineer including any documents, data, notes, reports, research, graphic presentation materials, and any other related material (collectively, "Materials"), shall at all times be the property of County. County, at all times, shall have a right of access to the Materials. Engineer shall promptly furnish and deliver all such Materials to County on request. Notwithstanding the foregoing, Engineer shall bear no liability or responsibility for Materials that have been modified post-delivery to County or used by County for a purpose other than that for which they were prepared under this Agreement.

18. **Inspection of Books and Records.** Engineer shall permit County, or any duly authorized agent of County, to inspect and examine the books, records, information, and documentation (collectively, "Records") of Engineer which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. Engineer shall maintain all such Records in a readily available state and location, reasonably accessible to County or their authorized representatives. County's right to inspect such books and records shall survive the termination of this Agreement for a period of four (4) years, or until any litigation concerning any of the Services has been satisfactorily resolved, whichever occurs later. **ENGINEER SHALL NOT DESTROY OR DISCARD ANY RECORDS REASONABLY RELATED TO THIS AGREEMENT OR THE SERVICES, UNLESS THE TIME PERIOD FOR MAINTAINING THE SAME HAS EXPIRED.**

19. **Termination.**

- (a) Without Cause. County, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to Engineer.
- (b) With Cause. County, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, with cause, for any of the following reasons, each of which shall constitute a material breach and "Default" of the Agreement:
 - (1) Engineer fails to perform any portion of the Scope of Services within the timeframe(s) provided under this Agreement.
 - (2) Engineer fails to comply with County's documentation and reporting requirements, terms and requirements of this Agreement, or applicable federal, state, or local laws and regulations.
 - (3) Non-performance and suspension of the Agreement by Engineer that exceeds thirty (30) calendar days due to Force Majeure.
 - (4) Engineer fails to perform any obligation under this Agreement or as required by law, ordinance, or regulation and such failure creates an imminent threat to the public health and/or safety.
 - (5) Engineer otherwise materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms.

- (6) County shall notify Engineer in writing of the alleged Default in reasonable detail ("Notice"). Upon receipt of said Notice, Engineer shall have opportunity to cure such Default within the time specified in the Notice by County. If Engineer fails to cure such Default within such time, and to the reasonable satisfaction of County, then County may elect to terminate this Agreement for cause.
- (7) If, after termination of the Agreement by County for cause, it is determined for any reason whatsoever that Engineer was not in Default, or that the Default was excusable, the rights and obligations of the Parties hereunder shall be the same as if the termination had been issued by County without cause in accordance with this Agreement.
- (c) Upon termination of this Agreement for any reason, Engineer shall cease all work and activity for the Services by the date specified by County and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. County shall compensate Engineer in accordance with Section 4, above, for such work provided by Engineer under this Agreement prior to its termination and which has not been previously presented for payment by Engineer to County.
- (d) If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the termination date, shall thereafter be paid to Engineer.

20. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other

inabilities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

21. **Assignment.** Engineer shall not assign this Agreement to another party without the prior written consent of County.
22. **Successors and Assigns Bound.** County and Engineer each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
23. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall Engineer release any material or information developed or received during the performance of Services hereunder unless Engineer obtains the express written approval of County or is required to do so by law.
24. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

If to County: Fort Bend County Engineering
Attn: County Engineer
301 Jackson Street, 4th Floor
Richmond, Texas 77469

And

Fort Bend County, Texas
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to Engineer: **Aviles Engineering Corporation**
Attn: _____
5790 Windfern Rd
Houston, Texas 77041

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

25. **Standard of Care.** Pursuant to Section 271.904 of the Texas Local Government Code, Engineer represents to County that Engineer has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Engineer shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
26. **Travel Policy.** Mutually approved travel and mileage expenses incurred in the performance of the Services hereunder will be reimbursed to Engineer only to the extent that those costs do not exceed Fort Bend County travel reimbursement allowances. A copy of County's Travel Policy with those reimbursement limits shall be provided to Engineer upon request.
27. **Arbitration, Litigation Waiver, and Attorney Fees.** County does not agree to submit disputes arising out of this Agreement to binding arbitration nor does County agree to pay any and/or all attorney fees incurred by Engineer in any way associated with this Agreement. Therefore, any references in Engineer's Proposal to binding arbitration, waiver of a right to litigate a dispute, or payment of attorney fees are hereby deleted.
28. **No Waiver of Jury Trial.** County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references in Engineer's Proposal to County's waiver of jury trial are hereby deleted.
29. **Limitations.** Limitations for the right to bring an action, regardless of form, shall be governed by the applicable laws of the State of Texas, and any provisions to the contrary in Engineer's Proposal are hereby deleted.
30. **Indemnification by County.** ENGINEER UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, COUNTY CANNOT ENTER INTO AN AGREEMENT WHEREBY COUNTY AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN ENGINEER'S PROPOSAL TO COUNTY DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS ENGINEER OR ANY OTHER PARTY, FOR ANY REASON WHATSOEVER, ARE HEREBY DELETED.

31. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED BY ENGINEER THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
32. **Conflict.** In the event there is a conflict among the terms of this document entitled "Agreement for Professional Engineering Services" and the terms of Engineer's Proposal or any other exhibit attached hereto, the terms of this document shall prevail with regard to the conflict.
33. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
34. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
35. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
36. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
37. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Engineer hereby verifies that Engineer and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, Engineer is not identified on a

list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
38. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, ENGINEER ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
39. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
40. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
41. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

IN WITNESS WHEREOF, and intending to be legally bound, County and Engineer hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY, TEXAS

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

**AVILES ENGINEERING CORPORATION,
a Texas corporation**

Authorized Agent – Signature

Authorized Agent- Printed Name

Title

Date

SR

Shane Ressler

SR. Vice President

10/22/24

APPROVED:

J. Stacy Slawinski

J. Stacy Slawinski, County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

i:\agreements\2024 agreements\engineering\aviles engineering corp (24-eng-100995)\agmt for professional engineering services - aviles engineering corporation.docx - JLF

EXHIBIT A

(Engineer's Proposal Follows Behind)

AVILES

August 21, 2024

Fort Bend County Engineering Department

c/o Binkley & Barfield

Mr. Zach Jacobson

1710 Seamist Drive

Houston, Texas 77008

Re: Construction Materials Testing and Inspection Services on
Fort Bend County Engineering Department, Precinct 1
Stella Road from Cottonwood School Road to W Fairgrounds Road
Fort Bend County Mobility Bond Project #20116
Our Proposal Number: 24-43 – Revision 1

Mr. Jacobson:

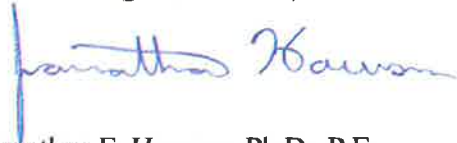
In response to your selection of Aviles Engineering Corporation (AEC) providing Construction Materials Testing and Inspection Services on the above referenced project, AEC is pleased to submit the following rates and cost estimate for your review.

AEC proposes to provide experienced technical personnel to perform testing and inspection services in general accordance with project specifications, project plans, ASTM Standards or other applicable procedures when requested. AEC also proposes that the work be accomplished on a unit price basis in accordance with the attached Schedule of Services and Fees and that the work be performed pursuant to agreed General Conditions. Copies of the AEC Schedule of Services and Fees and Estimate are enclosed herewith and are incorporated into this document. AEC's fees would be determined by the actual amount of technical time expended for this project and the amount of laboratory testing performed.

AEC will proceed with the work on the basis of verbal authorization; however, please sign and return one (1) copy of this document intact or provide an alternate form of contract for AEC's review. AEC can not issue any reports until either a signed copy of the document or an alternate form of contract is received. When returning this document or alternate form of contract, please complete the attached Project Data Sheet so that your file can be properly established.

Aviles Engineering Corporation appreciates the opportunity to offer its services to your project and looks forward to working with you during the construction phase.

Respectfully submitted,
Aviles Engineering Corporation
(TBPE Firm Registration No. F-42)



Jonathan E. Howson, Ph.D., P.E.
CMT Department Manager

Schedule of Services & Fees
Project Data Sheet
Estimate (2 Pages)

AGREED TO THIS _____ DAY OF _____, _____

BY: _____

TITLE: _____

FIRM: _____

Aviles Engineering Corporation
Schedule of Services and Fees * Construction Materials Testing

LABORATORY TESTING SERVICES

Concrete and Aggregates

Laboratory testing of concrete, grout, mortar and lightweight roof fill cylinders, beams and cubes delivered to our laboratory in accordance with ASTM procedures and project specifications:

a. Concrete Compression Test	Each	\$ 21.00
b. Reserves Not Tested.....	Each	\$ 21.00
c. Lightweight Concrete Compression Test.....	Each	\$ 21.00
d. Flexural Strength of Concrete Test (Beams)	Each	\$ 33.00
e. Compressive Strength of Mortar or Grout (2" x 2" x 2").....	Each	\$ 28.00
f. Compressive Strength of Grout Prism	Each	\$ 60.00
Sieve Analysis of Aggregates	Each	\$ 66.00
Washed Sieve Analysis on Flexible Base Materials	Each	\$ 115.00
Abrasion Test of Aggregates by Los Angeles Machine.....	Each	\$ 251.00
Density of Lightweight Concrete Cylinders	Each	\$ 98.00
Rel. Density & Absorption – Coarse Aggregates.....	Each	\$ 98.00
Rel. Density & Absorption – Fine Aggregates.....	Each	\$ 119.00
Concrete Mix Design Review for Compliance to ACI or ASTM Standards.....	Each	\$ 533.00
Preparation and Testing of Cores.....	Each	\$ 95.00

Soils

Moisture/Density Relationship of Soil (Proctor Test):

a. ASTM D 698 Method A or B	Each	\$ 246.00
b. ASTM D 1557 Method A or B	Each	\$ 263.00
c. ASTM D-698 & D-1557, Method C.....	Each	\$ 289.00
d. TxDOT Test Method Tex-113-E	Each	\$ 289.00
e. ASTM D 558 on Lime or Cement Treated Soils.....	Each	\$ 273.00
Atterberg Limits Determination (PI)	Each	\$ 76.00
Grain Size Analysis, Mechanical & Hydrometer	Each	\$ 164.00
Lime Series Curve, pH Method	Each	\$ 283.00
Material Finer Than #200 Sieve.....	Each	\$ 59.00
Sieve Analysis on + #200 Sieve Material	Each	\$ 69.00
Bearing Ratio Test (CBR), ASTM D-1883, per point (Does not include moisture/density relationship).....	Each	\$ 259.00

LABORATORY TESTING SERVICES, continued

Asphaltic Concrete Testing

a. Molding Specimens (3 Specimens).....	Per Set	\$ 77.00
b. Density (3 Specimens)	Per Set	\$ 65.00
c. Stability (3 Specimens).....	Per Set	\$ 115.00
d. Extraction and Gradation	Each	\$ 245.00
e. Theoretical Specific Gravity	Each	\$ 110.00
Thickness Determination of Asphaltic Concrete Cores	Each	\$ 27.00
Density Determination of Asphaltic Concrete Cores	Each	\$ 62.00
Asphaltic Concrete Mix Design Review	Each	\$ 533.00

Other Items

Compressive Strength of Cement Stabilized Sand or Soil Cement	Each	\$ 86.00
Moisture Content of Soil, Cement Stabilized Sand or Soil Cement	Each	\$ 12.00
Comp. Str. - Cement or LFA Stabilized Bases or Soils (Modified Tex-120-E).....	Each	\$ 311.00
Splitting Tensile Strength of Concrete.....	Each	\$ 132.00
Absorption and Saturation - Facia Brick	Each	\$ 87.00
Compressive Strength - Facia Brick	Each	\$ 40.00
Compressive Strength of Masonry Prisms	Each	\$ 226.00
Thickness Testing of Concrete or Asphaltic Concrete Cores (9 Point)	Each	\$ 34.00

FIELD TESTING SERVICES

Engineering Technician to Perform:

- Concrete Placement Inspection and testing
- Concrete Batch Plant Inspection
- Cylinder/Cube/Beam Pick Up
- Proofrolling Observation
- Concrete Placement and/or Batch Plant Inspection
- Drilled Pier, Pile and/or Foundation Inspection
- Post Tension Inspection
- Soil Cement or Lime Stabilization Inspection
- Field Compaction Testing and Observation
- Laboratory Technician
- Masonry Mortar, Grout or Prism Testing or Inspection
- Base Plate Inspection and Non-Shrink Grout Testing
- Sample Pick Up

Engineering Technician (ACI-I, SB 102, or SB 101) (Minimum 4 Hours)	Per Hour	\$ 69.00
Overtime	Per Hour	\$ 103.50
Senior Engineering Technician (ACI-I and SB 102) (Minimum 4 Hours)	Per Hour	\$ 83.00
Overtime	Per Hour	\$ 124.50
Concrete Pavement Cores (Minimum Fee \$639.00)		
6 Inches Thick or Less, 4 Inch Diameter Bit	Per Core	\$ 127.00
Additional Thickness – (6” to 12”) = \$12.00 per inch; (Over 12”) = \$15.00 per inch		
Coring of Structural Concrete or Core Diameters other than 4”	Will Quote Upon Request	

FIELD TESTING SERVICES, continued

Asphaltic Concrete Pavement Cores (Minimum Fee \$639.00)

a. 6 Inches Thick or Less, 4 Inch Diameter	Per Core	\$ 113.00
b. Additional Thickness over 6"	Per Inch	\$ 11.00
Reinforcing Steel Inspection (4 Hr. Min.)	Per Hour	\$ 96.00
Overtime	Per Hour	\$ 144.00
Structural Steel Inspection (4 hr. Min.)	Per Hour	\$ 122.00
Overtime	Per Hour	\$ 183.00

Other Services

Use of Nuclear Density Gauge	Per Day	\$ 90.00
Fireproofing – Cohesion / Adhesion Test	Each	\$ 35.00
Fireproofing – Density Test	Each	\$ 46.00
Floor Moisture Kit	Each	\$ 60.00
UT Equipment	Per Day	\$ 110.00
UT Couplant (Minimum Charge of 1 Pint)	Per Pint	\$ 44.00
Magnetic Particle Yoke	Per Day	\$ 44.00
Magnetic Powder (Minimum Charge 0.5 Pounds)	Per Pound	\$ 44.00
Use of James R-Meter	Per Day	\$ 75.00
Skidmore Wilhelm	Per Day	\$ 174.00
Solids Content of Lime Slurry - Field	Per Test	\$ 52.00
Field Sieve Analysis	Each	\$ 13.00
Vehicle Charge	Per Trip	\$ 90.00

Engineering Services and Management

Principal or Chief Engineer	Per Hour	\$ 266.00
Senior Engineer	Per Hour	\$ 218.00
Project Engineer	Per Hour	\$ 176.00
NACE Inspector Level II	Per Hour	\$ 150.00
Graduate Engineer, Project Manager	Per Hour	\$ 122.00
NICET Level IV	Per Hour	\$ 112.00
NICET Level III	Per Hour	\$ 107.00
NICET Level II, or TxDOT SB 101 & 102	Per Hour	\$ 96.00

Remarks

- All hours are portal to portal from 5790 Windfern, Houston, Texas. Fractions of hours will be billed to the closest quarter hour. Overtime is classified as all hours worked over eight (8) hours per day or hours worked before 6:00am, after 6:00 pm weekdays and any hours worked on Saturdays, Sundays or Holidays. Overtime will be invoiced at 1.5 times hourly rate. If a special trip is made just to pickup test cylinders, the minimum charge will be lowered to 2 hours for the technician.
- Badging, safety training courses and drug screen testing will be invoiced at applicable hourly rates. The drug screen and safety course fees will be invoiced at cost + 15%.
- Project Engineer / Manager to schedule and supervise personnel and evaluate and review reports will be billed at a minimum of 0.2 hours per report issued.
- Laboratory testing requiring overtime, weekend or holiday work will be invoiced at applicable test rate plus technician overtime charges.
- Services and fees not listed will be quoted upon request.

PROJECT DATA SHEET
CONSTRUCTION MATERIALS TESTING AND INSPECTION SERVICES

Project Name: _____

Project Location: _____

Your Job No: _____ Purchase Order No: _____

Project Manager: _____ Telephone No: _____

Number and Distribution of Reports:

() Copies To: _____ () Copies To: _____

Attn: _____

Attn: _____

() Copies To: _____ () Copies To: _____

Attn: _____

Attn: _____

Invoicing Address: _____

Attn: _____

Site Contact: _____ Telephone No: _____

Other Pertinent Information: _____

CONSTRUCTION MATERIALS ESTIMATE

Fort Bend County Engineering Department
 Stella Road from Cottonwood School Road to W Fairgrounds Road

Soils Inspection

Soils Inspection and Testing will be provided in general accordance with the project plans and specifications. The inspection and testing of the storm sewer will include field density testing during embedment and backfilling of the various utilities, manholes, junction boxes, interceptor structures, and inlets. The inspection and testing of the borrow and cement stabilized sand subgrade will include field density testing during placement. The inspection and testing of the pavement subgrade will include lime application inspection, field gradations after final mixing of the lime stabilized subgrade, field density testing, and depth checks. Samples to determine moisture density relationships (MDR) and other soil constants will be obtained as required, as will samples to determine cement stabilized sand compressive strength. AEC estimates one hundred twenty-one (121) trips for inspection and testing and sample pickups.

Service Description

	<u>Unit Rate</u>	<u>Quantity</u>	<u>Amount</u>
Senior Engineering Technician, per hour	\$ 83.00	948	\$ 78,684.00
Senior Engineering Technician, OT per hour	\$ 124.50	153	\$ 19,048.50
OMD Standard Compaction, Treated, each	\$ 273.00	10	\$ 2,730.00
OMD Standard Compaction, each	\$ 246.00	6	\$ 1,476.00
Atterberg Limits, each	\$ 76.00	15	\$ 1,140.00
Percent Passing #200 Sieve, each	\$ 59.00	6	\$ 354.00
Sieve Analysis, each	\$ 69.00	6	\$ 414.00
Optimum Lime Content - pH Method	\$ 283.00	4	\$ 1,132.00
Cement Sand Compressive Strength, each	\$ 86.00	40	\$ 3,440.00
Use of Nuclear Gauge, per day	\$ 90.00	102	\$ 9,180.00
Vehicle Charge, per trip	\$ 90.00	121	\$ 10,890.00
Project Engineer, per hour	\$ 176.00	49.8	\$ 8,764.80
		Subtotal	\$ 137,253.30

Concrete Inspection

Concrete Inspection will be provided per the project plans and specifications. It will include testing of the concrete driveways, 3" Concrete Slope Paving, 5" Channel Lining, 8" Channel Lining, and Interceptor Structures. Cylinders will be cast in sets of 4 (*1 set for every 150 cu. yd. for paving*). AEC estimates twenty-six (26) trips for concrete testing and twenty-six (26) trips for cylinder pickups.

Service Description

	<u>Unit Rate</u>	<u>Quantity</u>	<u>Amount</u>
Senior Engineering Technician, per hour	\$ 83.00	180	\$ 14,940.00
Senior Engineering Technician, OT per hour	\$ 124.50	6	\$ 747.00
Engineering Technician, per hour	\$ 69.00	47.25	\$ 3,260.25
Engineering Technician, OT per hour	\$ 103.50	11.25	\$ 1,164.38
Concrete Mix Design Review	\$ 533.00	2	\$ 1,066.00
Concrete Compression Tests, each	\$ 21.00	123	\$ 2,583.00
Vehicle Charge, per trip	\$ 90.00	52	\$ 4,680.00
Project Engineer, per hour	\$ 176.00	10.4	\$ 1,830.40
		Subtotal	\$ 30,271.03

Estimate Continued on Next Page

Construction Materials Testing and Inspection Estimate, continued

Asphalt Testing

Hot Mix Asphaltic Concrete Testing will be provided per the Plans and Specifications. It will include the sampling and testing of the 10" Base Course (Black Base) and the 3.5" Hot Laid Asphaltic Concrete - Type "D". AEC estimates fifty-six (56) days for asphalt laydown inspection and testing and sixteen (16) full sets of laboratory asphalt tests.

<u>Service Description</u>	<u>Unit Rate</u>	<u>Quantity</u>	<u>Amount</u>
Senior Engineering Technician, per hour	\$ 83.00	448	\$ 37,184.00
Senior Engineering Technician, OT per hour	\$ 124.50	112	\$ 13,944.00
Asphalt Mix Design Review	\$ 533.00	2	\$ 1,066.00
Use of Nuclear Gauge, per day	\$ 90.00	56	\$ 5,040.00
Maximum Theoretical Specific Gravity, each	\$ 110.00	16	\$ 1,760.00
Molding Specimens, 3 per set	\$ 77.00	16	\$ 1,232.00
Bulk Density of Lab Molded Specimen, 3 per set	\$ 65.00	16	\$ 1,040.00
Stability: Hveem, 3 per set	\$ 115.00	16	\$ 1,840.00
Extraction / Gradation, each	\$ 245.00	16	\$ 3,920.00
Vehicle Charge, per trip	\$ 90.00	56	\$ 5,040.00
Project Engineer, per hour	\$ 176.00	21.6	\$ 3,801.60
		Subtotal	\$ 75,867.60

Project Management

Project management will be provided. It may include one (1) pre-construction meeting.

<u>Service Description</u>	<u>Unit Rate</u>	<u>Quantity</u>	<u>Amount</u>
Project Engineer, per hour	\$ 176.00	3	\$ 528.00
Vehicle Charge, per trip	\$ 90.00	1	\$ 90.00
		Subtotal	\$ 618.00

ESTIMATED TOTAL FOR SERVICES AND TESTING = \$244,009.93

NOTES & ASSUMPTIONS:

- *No standby time is included in this estimate, it is based on the Contractor being ready for inspection at the time the inspection is scheduled.*
- *No re-inspection or re-testing is included in this estimate*
- *Other special inspections and testing may be required in the plans and specifications. These services can be provided if not provided by others. AEC has not included any other special inspections or building code required testing as part of this proposal other than what is specifically stated above.*
- *No engineer or project management time is included for onsite progress meetings. AEC can attend meetings if requested by the owner or contractor.*
- *Reinforcing Steel Inspections were not included in this proposal. AEC can perform reinforcing steel inspections if requested by the owner or engineer.*