

STATE OF TEXAS

§

COUNTY OF FORT BEND

§

§

AGREEMENT FOR PROFESSIONAL CONSTRUCTION MATERIALS TESTING AND INSPECTION

This Agreement for Professional Construction Materials Testing and Inspection ("Agreement") is made and entered into by and between Fort Bend County, Texas ("County"), a political subdivision of the state of Texas, and The Murillo Company ("Consultant"), a company authorized to conduct business in the State of Texas. County and Consultant may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Consultant is a professional engineering firm which provides geotechnical engineering, environmental site assessment, and materials testing and inspection services in the Greater Houston Area; and

WHEREAS, County desires for Consultant to provide professional construction materials testing and inspection services regarding Jones Creek Ranch Park, Fort Bend County, Texas; and

WHEREAS, Consultant 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 Consultant 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.** Consultant shall render services to County as provided in Consultant's Construction Materials Testing Services Proposal dated January 17, 2025, 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 Consultant's receipt of Notice to Proceed and shall end no later than December 31, 2026. Consultant 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.** Consultant's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Consultant for the Services performed under this Agreement is Sixty-Five Thousand Eight Hundred Sixty-One and no/100 dollars (\$65,861.00). In no event shall the amount paid by

County to Consultant under this Agreement exceed said Maximum Compensation without an approved change order.

- (a) Consultant 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 Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff person designated by the County Parks Director, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. Consultant 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 Consultant, if any, shall be governed by Chapter 2251 of the Texas Government Code.
- (d) Consultant understands and agrees that County's obligation to make any payment(s) hereunder is dependent upon Consultant'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.** Consultant understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is Sixty-Five Thousand Eight Hundred Sixty-One and no/100 dollars (\$65,861.00). In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Consultant 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 Sixty-Five Thousand Eight Hundred Sixty-One and no/100 dollars (\$65,861.00) specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay Consultant under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed Sixty-Five Thousand Eight Hundred Sixty-One and no/100 dollars (\$65,861.00).

6. **Non-appropriation.** Consultant understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify Consultant 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.** Consultant 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 Consultant.
8. **Insurance.** Prior to commencement of the Services, Consultant 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. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant 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. Consultant 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 Consultant shall contain a waiver of subrogation in favor of County.

If required coverage is written on a claims-made basis, Consultant 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.

Consultant 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 Consultant.

9. **Indemnity.** PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, CONSULTANT 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 CONSULTANT OR CONSULTANT'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL. IN ADDITION, HALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.

CONSULTANT 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, CONSULTANT 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 CONSULTANT 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 CONSULTANT, OR ITS AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL, CONSULTANT 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 CONSULTANT 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.** Consultant 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 Consultant 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 Consultant expressly marked as proprietary or confidential. County shall not be liable to Consultant 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. Consultant further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.

11. **Compliance with Laws.** Consultant 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, Workers Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. Consultant, 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, Consultant 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 Consultant. Consultant 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.** Consultant may use County's name without County's prior written consent only in Consultant's customer lists. Any other use of County's name by Consultant 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.** Consultant 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 Consultant 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 Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of Consultant 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, Consultant shall comply with, and will require that all Consultant's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to Consultant 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.** Consultant 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 Consultant 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 Consultant 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 Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant'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 Consultant who can be shown to have had no access to the Confidential Information.

Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant 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. Consultant 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, Consultant shall advise County immediately in the event Consultant 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 Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant 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, Consultant will promptly turn over to County all documents, papers, and other matters in Consultant's possession which embody Confidential Information.

Consultant 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. Consultant 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.

Consultant 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 Consultant 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. Consultant shall promptly furnish and deliver all such Materials to County on request. Notwithstanding the foregoing, Consultant 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.** Consultant shall permit County, or any duly authorized agent of County, to inspect and examine the books, records, information, and documentation (collectively, "Records") of Consultant which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. Consultant 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. **CONSULTANT 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 Consultant.
- (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) Consultant fails to perform any portion of the Scope of Services within the timeframe(s) provided under this Agreement.
 - (2) Consultant 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 Consultant that exceeds thirty (30) calendar days due to Force Majeure.
 - (4) Consultant 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) Consultant 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 Consultant in writing of the alleged Default in reasonable detail ("Notice"). Upon receipt of said Notice, Consultant shall have opportunity to cure such Default within the time specified in the Notice by County. If Consultant 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 Consultant 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, Consultant 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 Consultant in accordance with Section 4, above, for such work provided by Consultant under this Agreement prior to its termination and which has not been previously presented for payment by Consultant 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 Consultant.
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 incapacities 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.** Consultant shall not assign this Agreement to another party without the prior written consent of County.
22. **Successors and Assigns Bound.** County and Consultant 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 Consultant release any material or information developed or received during the performance of Services hereunder unless Consultant 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 Parks and Recreation
Attn: Director
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 Consultant: The Murrillo Company
10325 Landsbury Drive, Suite 400
Houston, Texas 77099-4299

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, Consultant represents to County that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Consultant 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 Consultant 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 Consultant 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 Consultant in any way associated with this Agreement. Therefore, any references in Consultant's Construction Materials Testing Services 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 Consultant's Construction Materials Testing Services 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 Consultant's Construction Materials Testing Services Proposal are hereby deleted.
30. **Indemnification by County. CONSULTANT 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 CONSULTANT'S CONSTRUCTION MATERIALS TESTING SERVICES PROPOSAL TO COUNTY DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS CONSULTANT 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 CONSULTANT 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 Construction Materials Testing and Inspection" and the terms of Consultant's Construction Materials Testing Services 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, Consultant hereby verifies that Consultant 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, Consultant 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, Consultant 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, Consultant 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, Consultant 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, CONSULTANT 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[EXECUTION PAGE FOLLOWS]

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

FORT BEND COUNTY, TEXAS

THE MURILLO COMPANY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

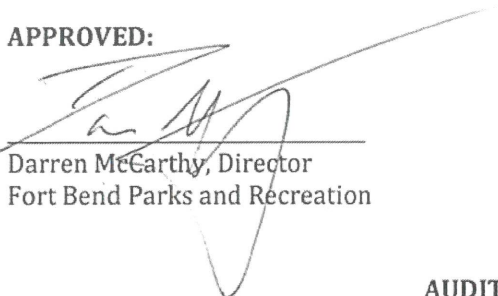
Donna Murillo
Authorized Agent - Signature

DONNA MURILLO
Authorized Agent- Printed Name

E.V.P.
Title

3/3/2025
Date

APPROVED:


Darren McCarthy, Director
Fort Bend Parks and Recreation

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

Exhibit A: Consultant's Construction Materials Testing Services Proposal dated January 17, 2025

i:\agreements\2025 agreements\purchasing\parks\the murillo group (25-parks-100502)\agmt for professional construction materials testing and inspection (kcj - 2.25.2025).docx

EXHIBIT A

(Follows Behind)

CONSTRUCTION MATERIALS TESTING SERVICES PROPOSAL

January 17, 2025

Kaluza, Inc.
3014 Avenue I
Rosenberg, Texas 77471

Attn: DeWayne O. Davis, P.E.

Re: Materials Testing Services
Jones Creek Ranch Park
Paving and Drainage Improvements
Fort Bend County, Texas

We are pleased to submit our budgetary estimate to administer the Materials Testing and Inspection during construction for the above referenced project. The estimated testing costs based upon information provided by Client, may vary due to construction schedules, weather, or additional testing requested. All invoices will be in accordance with the actual unit cost.

All hourly work will be charged on a portal to portal basis from our laboratory. Overtime is billed at 1½ times the unit rate for hours worked in excess of 8 hours per day Monday thru Friday, all day Saturday, Sunday or Holidays. A minimum 24 hours advance notice of any desired material testing to be conducted is required by 4 pm of the previous day (M-F). It is understood that our services are performed on a "CALL OUT BASIS." We will not be held responsible for any tests not performed in areas requiring testing, due to failure to notify this office.

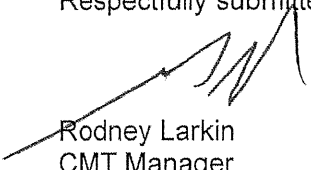
We can proceed with this project upon receipt of the attached Agreement and Deposit. To perform our services we require a complete set of civil and structural plans along with the concrete mix designs. Testing Reports will NOT be issued until we receive the above material in our office.

If you call us out to perform any services covered by this Budgetary Estimate without returning the attached Agreement, you agree that the terms of the attached Agreement will govern our work on this project.

Our laboratory maintains Professional Liability Insurance and meets the requirements of ASTM E-329, a recommended practice for Inspection and Testing Agencies for Concrete and Steel, as used in construction. All prices will remain valid for a period of six months.

Thank you for this opportunity to submit this proposal for your consideration.

Respectfully submitted,



Rodney Larkin
CMT Manager
Texas Registration No. F-2911

The Murillo Company

10325 LANDBURY STE. 400 • HOUSTON, TX 77099-4299
(281) 933-9702 • WWW.MURILLOCOMPANY.COM

COST ESTIMATE

Description	ASTM	Unit Rate	Quantity	Total
Earthwork (Utilities and Roadway)				
Moisture / Density Curve (Proctor)	D-698	\$ 150.00 each	2 proctors	\$ 300.00
Plasticity Index (Atterberg Limits)	D-4318	\$ 40.00 each	4 P.I.'s	\$ 160.00
CSS Compressive Strength Tests	N/A	\$ 65.00 each	8 100 PSI's	\$ 520.00
Sampling Time	D-75	\$ 55.00 hour	4 hours	\$ 220.00
Proof Roll Hours (Min. 4.0 Hrs.)	D-6938	\$ 55.00 hour	32 hours	\$ 1,760.00
Soils Technician Hours (Min. 4.0 Hrs.)	D-6938	\$ 55.00 hour	48 hours	\$ 2,640.00
Nuclear Gauge	N/A	\$ 40.00 day	8 days	\$ 320.00
Vehicle Charge	N/A	\$ 60.00 trip	16 trips	\$ 960.00
			Sub-Total	\$ 6,880.00
Cast In Place Concrete (Sidewalk, Curb and Gutter)				
Review Mix Design	N/A	\$ 250.00 each	1 each	\$ 250.00
Concrete Technician Hours (Min. 4.0 Hrs.)	C-31	\$ 55.00 hour	72 hours	\$ 3,960.00
Concrete Cylinder Cast	C-39	\$ 20.00 each	72 cylinders	\$ 1,440.00
Vehicle Charge	N/A	\$ 60.00 trip	18 trips	\$ 1,080.00
			Sub-Total	\$ 6,730.00
Asphaltic Concrete Paving				
Moisture / Density Curve (Proctor) Lime	D-698	\$ 175.00 each	2 proctors	\$ 350.00
Moisture / Density Curve (Proctor) Base	D-1557	\$ 175.00 each	1 proctors	\$ 175.00
Plasticity Index (Atterberg Limits)	D-4318	\$ 40.00 each	14 P.I.'s	\$ 560.00
Sampling Time	N/A	\$ 55.00 hour	10 hours	\$ 550.00
Gradation Technician Hours (Min. 4.0 Hrs.)	N/A	\$ 55.00 hour	160 hours	\$ 8,800.00
Soils Technician Hours (Min. 4.0 Hrs.)	D-2922	\$ 55.00 hour	160 hours	\$ 8,800.00
Nuclear Gauge	N/A	\$ 40.00 day	20 days	\$ 800.00
Asphaltic Mix Design Review	N/A	\$ 100.00 mix	2 mixes	\$ 200.00
Extraction Tests	TxDOT-210F	\$ 280.00 test	20 tests	\$ 5,600.00
Specific Gravity	D-2041 & 201F	\$ 72.00 each	20 each	\$ 1,440.00
Asphalt Content	D-4125	\$ 81.00 each	20 each	\$ 1,620.00
Asphaltic Concrete Specimens Molding	TxDOT-206F	\$ 63.00 set	20 sets	\$ 1,260.00
Hveem Stability	TxDOT-208F	\$ 95.00 set	20 sets	\$ 1,900.00
Asphalt Technician Hours (Min 4.0 Hrs.)	D-2922	\$ 55.00 hour	160 hours	\$ 8,800.00
Nuclear Gauge	N/A	\$ 40.00 day	20 days	\$ 800.00
Asphalt Core & Base	C-42	\$ 100.00 each	32 each	\$ 3,200.00
Bulk Density of Core	TxDOT-207F	\$ 48.00 each	32 each	\$ 1,536.00
Vehicle Charge	N/A	\$ 60.00 trip	62 trips	\$ 3,720.00
			Sub-Total	\$ 50,111.00
Project Management				
Principal Engineer	N/A	\$ 250.00 hour	1 hours	\$ 250.00
CMT Department Manager Hours	N/A	\$ 115.00 hour	6 hours	\$ 690.00
Administrative / Clerical Hours	N/A	\$ 60.00 hour	20 hours	\$ 1,200.00
			Sub-Total	\$ 2,140.00
**BILLED ONLY FOR SERVICES PERFORMED				
				ESTIMATE \$65,861.00

AGREEMENT FOR MATERIALS TESTING SERVICES

THE AGREEMENT

This AGREEMENT is by and between THE MURILLO COMPANY, ("CONSULTANT") and KALUZA, INC. ("CLIENT"). This AGREEMENT between the parties listed consist of the terms and condition set forth here, identified as Material Testing Services Proposal dated January 17, 2025, for the following project; Jones Creek Ranch Park, Paving and Drainage Improvements, Fort Bend County, Texas, as outlined by the Construction Materials Testing Service Proposal which is attached to this AGREEMENT. Together these elements will constitute the entire AGREEMENT.

TERMS AND CONDITIONS

CONSULTANT agrees to provide Material Testing and other technical services for the CLIENT in accordance with the rates set forth in this Agreement for a fee as shown on the attached Construction Materials Testing Services Proposal.

ARTICLE 1. SERVICES

Consultant will:

- 1.1 Act for CLIENT with the professional skill and care ordinarily provided by competent Geotechnical consultants practicing under the same or similar circumstances and professional license.
- 1.2 Provide those services requested of CONSULTANT and for which CONSULTANT is adequately staffed and equipped to perform.
- 1.3 Perform all technical services under the direction of a Registered Professional Engineer and in accordance with the basic requirements of the appropriate Standards of The American Society of Testing and Materials where applicable. Alternate standards mutually agreeable to the CONSULTANT and CLIENT may also be used.
- 1.4 Consider all reports to be the confidential property of CLIENT, and distribute reports only to those persons, organizations or agencies specifically designated in writing by CLIENT or his authorized representative.
- 1.5 Retain records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to CLIENT at all reasonable times and fees in effect at the time of the request.

ARTICLE 2. CLIENT'S RESPONSIBILITIES

CLIENT or his authorized representative will:

- 2.1 Notify CONSULTANT a minimum of 24 hours in advance of any desired material testing, and must specify what testing CLIENT desires to be conducted. It is the CLIENT'S responsibility to have CONSULTANT notified of any desired testing. CLIENT acknowledges that CONSULTANT'S services are performed on a "call out basis" and CONSULTANT is not responsible if testing is not performed due to CONSULTANT not being timely notified of the time and nature of testing desired.
- 2.2 Provide CONSULTANT full information regarding conceptual design data related to Materials Testing Services considerations for the project, locations of existing underground utilities and any knowledge of past history which suggests special consideration, performance requirements for the proposed project which may deviate from the norm, changes in aforementioned considerations as the project progresses through construction completion which may relate to Materials Testing considerations for the project, and other information for the proper performance of CONSULTANT. CONSULTANT shall be entitled to rely upon the accuracy and completeness of all such information provided by the CLIENT.
- 2.3 Furnish right of entry onto the project site for CONSULTANT to make the necessary field studies. CONSULTANT will endeavor to preserve the land but make no guarantee to restore the site to its original condition unless a separate agreement is made for such restoration, in which case CONSULTANT shall add the cost of restoration to the fee for the project.
- 2.4 Designate in writing those responsible persons, organizations or agencies to be contacted in the event conditions are revealed during the execution of CONSULTANT'S study that would require possible alteration of the study or would potentially influence design that is proceeding in parallel with the study. The responsible party shall have authority to issue change order to the contract.
- 2.5 Guarantees to CONSULTANT that the CLIENT is not a minor, that the CLIENT otherwise has the legal capacity to enter into this contract, or if a corporation that the signatory is duly authorized to enter into this contract and bind the corporation, and that sufficient monies are available to fund CONSULTANT'S fee.

ARTICLE 3. GENERAL CONDITIONS

- 3.1 CONSULTANT, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to the project customarily vested in the project architects, design engineers, or any other design agencies or authorities.
- 3.2 CONSULTANT shall not be responsible for acts or omissions of any party or parties involved in the design of the project or the failure of any contractor or subcontractor to construct any item on the project in accordance with recommendations contained in any correspondence or verbal recommendation issued by CONSULTANT.
- 3.3 This AGREEMENT may be terminated by either party on receipt of written notice or by mutual agreement. If this AGREEMENT is terminated by either party, CONSULTANT shall be paid in full for all services performed through the termination date, and the CLIENT shall then be provided with a complete report of the results of tests and analysis conducted prior to termination.

3.4 CLIENT may not delegate, assign, sublet or transfer its duties or interest in this AGREEMENT without the written consent of CONSULTANT. CONSULTANT may delegate, assign, sublet or transfer its duties hereunder without the written consent of CLIENT, but CONSULTANT shall be made responsible for the completion of its duties. CONSULTANT may not delegate, assign or transfer its interest in this AGREEMENT without the written consent of CLIENT.

3.5 In view of the relative risks and rewards of this project, CLIENT agrees to limit any and all liability of CONSULTANT for damages including costs of defense and expenses, on account of any design defect, error, omissions, professional negligence, breach of contract or breach of warranty to the sum of \$50,000 or the amount of CONSULTANT'S fee, whichever is greater.

ARTICLE 4. INSURANCE

4.1 CONSULTANT shall secure and maintain throughout the full period of this AGREEMENT insurance to protect it from claims under applicable Workmen's Compensation Acts and from claims for bodily injury, death or property damage as may arise from the performance of services under this AGREEMENT. CONSULTANT will, upon request, file certificate of such insurance coverage with CLIENT or his authorized representative.

4.2 No insurance, of whatever kind or type, which may be carried by CONSULTANT, is to be considered as in any way limiting the contractor's or subcontractor's responsibility for damages resulting from his operations or for furnishing work and material to the project. CLIENT agrees to include, or cause to be included in the project's construction contract requirements for insurance coverage and performance bonds to be secured and maintained by the project contractor as CLIENT deems adequate to indemnify CLIENT, CONSULTANT, and other concerned parties, against claims for damages and to insure compliance of work performance and materials with project requirements.

ARTICLE 5. CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

ARTICLE 6. PAYMENT

6.1 CLIENT will pay CONSULTANT for services and expenses in accordance with the attached fee schedule. CONSULTANT'S invoices will be presented at the completion of its work or monthly and will be due and payable upon receipt.

6.2 CONSULTANT shall be paid in full for all services under the AGREEMENT, including any overruns of CLIENT'S contract of any unforeseen need for CONSULTANT'S services exceeding original contract requirements. Payment for such service shall be made irrespective of any claim by CLIENT for an offset or credit. Any such claim shall in no respect delay payment of fees for services performed by CONSULTANT.

ARTICLE 7. EXTENT OF AGREEMENT

The AGREEMENT, including these terms and conditions, represents the entire agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or agreements, written or oral. The AGREEMENT may be amended only in writing and signed by CLIENT and CONSULTANT.

ARTICLE 8. APPLICABLE LAW

8.1 The AGREEMENT shall be governed by the laws of the State of Texas.

8.2 The AGREEMENT is performable in whole or in part in Harris County, Texas.

ARTICLE 9. MEDIATION

Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this AGREEMENT to non-binding mediation. Mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation services or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this AGREEMENT. This ARTICLE shall survive completion or termination of this AGREEMENT, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this AGREEMENT after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under laws of the State of Texas.

If any of the provision contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforce ability of the remaining provision will not be impaired. Limitation of liability and indemnities will survive termination of the AGREEMENT for any cause.

The Murillo Company

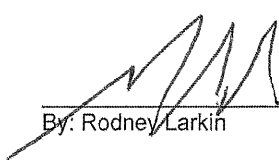
10325 LANDBURY STE. 400 • HOUSTON, TX 77099-4299
(281) 933-9702 • WWW.MURILLOCOMPANY.COM

The Parties have read the foregoing, understand completely the terms, and willingly enter into this AGREEMENT which will become effective on the date signed by the CLIENT below.

CLIENT

THE MURILLO COMPANY
CONSULTANT

Signature



By: Rodney Larkin

Printed Name/Title

CMT Manager
Title

Date

January 17, 2025
Date