

PROFESSIONAL SERVICES AGREEMENT
FOR CONSTRUCTION MATERIALS TESTING AND OBSERVATION SERVICES

The Agreement ("Agreement") is made and entered into by and between the **WILLIS INDEPENDENT SCHOOL DISTRICT** ("District" or "WISD"), an Independent School District and political subdivision of the State of Texas, and **ECS Southwest, LLP** ("Engineer" or "ECS"), (both District and Engineer may be referenced herein collectively as the "Parties" or each a "Party") to provide the following:

- earthwork testing and lab testing;
- sampling of fresh concrete; and
- lab testing of hardened concrete as specified in project documents

in relation to the **Willis Independent School District New Elementary # 7 Building** (MP Clark Road; Conroe, TX 77304) (the "**Project**"). A more specific and detailed scope of services related to the Project is attached as **Exhibit A** ("Appendix I – Scope of Services") and is incorporated herein by reference and for all purposes.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges, and obligations herein contained, District and Engineer do hereby agree as follows:

I. PERIOD OF SERVICE

1.1 The Agreement shall take effect upon execution by both Parties and continue in full force and effect for the period required for completion of the duties as set forth in **Exhibit A**. Performance shall commence upon issuance of a Notice to Proceed by District's representative or the representative's designee and shall terminate upon substantial completion of Engineer's duties as set forth in the Scope of Services and upon written acceptance by District of Engineer's work product or services rendered unless extension or earlier termination shall occur pursuant to any of the Agreement's provisions.

1.2 If funding the Project is not appropriated at the time the Agreement is entered into, District retains the right to terminate the Agreement at the expiration of each of District's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

II. SCOPE OF SERVICES

2.1 Engineer, in consideration for the compensation herein provided, shall perform that which is set forth in **Exhibit A** and that which is in accordance with the Plans and Specifications for the construction of Elementary School # 7. All work shall be performed in compliance with the applicable materials testing and inspection industry standards specified in the Plans and Specifications. At a minimum, Engineer shall provide appropriate deficiency information to the construction team as materials testing and inspection progresses; such information shall be sufficient to facilitate dispatch of appropriate personnel to resolve items noted prior to final testing and inspection work. Engineer shall prepare a final report in accordance with the AABC standards and requirements, or such other industry procedural standards required by the Project Plans and Specifications, and provide a warranty for a minimum period of ninety (90) calendar days following submission of completed report, during which time, District may request a recheck of up to 10% of total number of terminals, or resetting of any outlet, coil, or device listed in the test report.

2.2 Engineer shall not commence work until Engineer has been thoroughly briefed by District's representative on the scope of the Project ("Scope Meeting") and has been notified in writing by District's representative to proceed. Engineer shall provide a final written summary of Engineer's services required by the Project's scope. Should the scope of the Project subsequently change, either of the Parties may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article IV, COMPENSATION, and cannot substantially alter the original scope of the Agreement.

2.3 Engineer shall be represented by a professional engineer licensed to practice in the State of Texas (or shall represent itself) at meetings of any official nature concerning the Project, including but not limited to Scope Meetings, Review Meetings, and other meetings as may be required for the Project. All submittals shall carry the signature and seal, or, in the case of progress submittals or incomplete submittals, an appropriate disclaimer with the responsible professional engineer's name and license number, and date of the submittal. All Services performed under the Agreement must be conducted in full conformance with the Texas Engineering Practice Act. Persons retained by Engineer to perform work pursuant to the Agreement shall be employees or subcontractors of Engineer.

2.4 Engineer shall complete all work on the Project in compliance with the Agreement, in a timely fashion, consistent with the construction schedule and agrees to staff the Project with sufficient, necessary, and qualified personnel to the Project in order not to delay or disrupt the progress of the Project.

III. COORDINATION WITH DISTRICT

3.1 Engineer shall hold periodic conferences with District's representative, so that the Project, as developed, will have the full benefit of District's experience and knowledge of existing needs and facilities and be consistent with District's current policies and standards District shall make available, for Engineer's use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and components subject to testing and inspection, and to this Project as may be requested by Engineer at no cost to Engineer, but does not warrant the accuracy of such documents.

3.2 District's representative shall act on behalf of District with respect to the work performed under the Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define District's policies and decisions with respect to materials, equipment elements, and systems pertinent to Engineer's services.

3.3 District shall provide written notice to Engineer of any errors or omissions discovered in Engineer's services, or performance, or of any development, that affects the scope or timing of Engineer's services.

3.4 Engineer shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by Engineer for District's use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project, as may be necessary for completion of the Project. Engineer shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article IV, COMPENSATION.

IV. COMPENSATION

4.1 For and in consideration of the services to be rendered by Engineer, District shall pay Engineer a fee not to exceed that set forth in this Article IV, COMPENSATION. Nothing contained in the Agreement shall require District to pay for any unsatisfactory work, as determined by District's representative, or for work that is not in compliance with the terms of the Agreement. District shall not be required to make any payments to Engineer at any time Engineer is in default under the Agreement.

4.2 Basis for Compensation and Invoicing. The lump sum fee for Engineer's base work as defined in the Scope of Services shall be the sum of **One Hundred Seventy-Seven Thousand Seven Hundred Forty-Two AND 00/100 DOLLARS (\$177,742.00)** ("Base Fee"). Engineer may submit invoices monthly for work performed and completed which has not been included on previous invoices. Payments shall be made to Engineer in accordance with the progress of the Project.

4.3 Modifications. Engineer and District acknowledge that the Base Fee, as set out above, has been established based upon the total estimated costs of services to be rendered under the Agreement.

Compensation for additional services shall be subject to renegotiation in accordance with Section 4.4 below.

4.4 Additional Professional Services. Engineer may be required to perform the additional services in connection with the Agreement including, but not limited to, the following:

(a) Services after the completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantee called for in any contract for the Project.

(b) Additional copies of reports, drawings and specifications over the number specified in the Agreement.

4.5 Compensation for Additional Professional Services. Compensation for such additional services shall be subject to prior approval of District and approval of the Board of Trustees if additional funds not provided for in the initial budget are required to cover such services. Should Engineer be directed in writing by District's representative to perform these services, compensation shall be paid by District to Engineer as authorized in writing by District's representative and may be based upon the fee schedule attached as Exhibit B ("Appendix II – Fee Schedule") and incorporated herein by reference for all purposes.

V. OWNERSHIP AND RETENTION OF DOCUMENTS

5.1 Upon completion or termination of the Project, or upon request by District, all documents and information, in whatever form, given to, prepared or assembled by Engineer in connection with its performance of its duties under the Agreement shall become the sole property of District and shall be delivered at no cost to District without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. District shall have free and immediate access to all such information at all times during the term of the Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Engineer may make copies of any and all documents for its files, at its sole cost and expense.

5.2 Engineer agrees to maintain all books, records and reports required under this contract for a period of not less than three (3) years after final payment is made and all pending matters are closed. In addition, Engineer shall maintain an acceptable cost accounting system during the term of the Agreement. Engineer agrees to provide District, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Engineer, which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts and transcriptions.

5.3 Engineer shall notify District, immediately, in the event Engineer receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Engineer understands and agrees that District will process and handle all such requests.

VI. TERMINATION OF AGREEMENT

6.1 Termination without Cause.

6.1.1 The Agreement may be terminated by District without cause, prior to District's representative giving Engineer written Notice to Proceed, should District's representative, in its sole discretion, determine that it is not in District's best interest to proceed with the Agreement. Such notice shall be provided in accordance with the notice provisions contained in the Agreement and shall be effective immediately upon delivery to Engineer.

6.1.2 The Agreement may be terminated by District at any time after issuance of District's representative's Notice to Proceed, either for District's convenience or because of Engineer's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to District.

6.1.3 If the termination is for the convenience of District, and following inspection and acceptance of Engineer's services properly performed prior to the effective date of termination an equitable adjustment in the contract price shall be made. Engineer shall not, however, be entitled to lost or anticipated profit on unperformed services, should District choose to exercise its option to terminate, nor shall Engineer be entitled to compensation for any unnecessary or unapproved work performed during time between the issuance of District's notice of termination and the actual termination date.

6.1.4 If the termination is due to Engineer's failure to fulfill its obligations, District may take over the work and prosecute the same to completion by contract or otherwise. In such case, Engineer shall be liable to District for any additional cost occasioned to District thereby.

6.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that Engineer had not so failed, the termination shall be deemed to have been effectuated for the convenience of District. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 6.1.3 of this clause.

6.1.6 The rights and remedies of District provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6.1.7 The Agreement may be terminated by Engineer, at any time after issuance of District's representative's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in the Agreement.

6.2 Defaults with Opportunity for Cure. Should Engineer fail, as determined by District's representative, to satisfactorily perform the duties set out in Article II. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, District shall deliver written notice of said default, in accordance with the notice provisions contained in the Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Engineer shall have fourteen (14) calendar days after receipt of the written notice to cure such default. If Engineer fails to cure the default within such cure period or take steps reasonably calculated to cure such default, District shall have the right, without further notice, to terminate this Contract in whole or in part as District deems appropriate, and to contract with another Engineer to complete the work required by the Agreement. District shall also have the right to offset the cost of said new agreement with a new Engineer against Engineer's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of District to mitigate its losses.

6.3 Termination for Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Engineer given in accordance with the notice provisions contained in the Agreement, District may immediately terminate this Contract, in whole or in part, "for cause":

6.3.1 Engineer makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to District in connection with the Agreement or its performance hereunder; or

6.3.2 Engineer violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in the Agreement, except those events of default for which an opportunity to cure is provided herein; or

6.3.3 Engineer fails to cure, or initiate steps reasonably calculated to cure, a default as required by the Agreement, within the time period required for cure; or

6.3.4 Engineer violates any rule, regulation or law to which Engineer is bound or shall be bound under the terms of the Agreement; or

6.3.5 Engineer attempts the sale, transfer, pledge, conveyance or assignment of the Agreement contrary to the terms of the Agreement; or

6.3.6 Engineer ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) calendar days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Engineer's assets or properties.

6.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, the Agreement shall automatically terminate as of the effective date of such prohibition.

6.5 Orderly Transfer Following Termination. Regardless of how the Agreement is terminated, Engineer shall effectuate an orderly transfer to District or to such person(s) or firm(s) as District may designate, at no additional cost to District. Upon the effective date of expiration or termination of the Agreement, Engineer shall cease all operations of work being performed by Engineer, or any of its subcontractors, pursuant to the Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Engineer, in connection with the services rendered by Engineer under the Agreement, regardless of storage medium, shall be transferred to District. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Engineer's sole cost and expense. Payment of compensation due or to become due to Engineer is conditioned upon delivery of all such documents.

6.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of the Agreement, Engineer shall submit to District its claims, in detail, for the monies owed by District for services performed under the Agreement through the effective date of termination. **Failure by Engineer to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Engineer of any and all right or claims to collect moneys that Engineer may rightfully be otherwise entitled to for services performed pursuant to the Agreement.**

6.7 Termination Not Sole Remedy. In no event shall District's action of terminating the Agreement, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Engineer for any default hereunder or other action.

VII. SUSPENSION OF WORK UNDER AGREEMENT

7.1 Right of District to Suspend. District may suspend the Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in the Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Engineer of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension but will in no way guarantee the total number of days of suspension.

7.2 Engineer's Right to Terminate in Event of Suspension of Agreement. In the event such suspension exceeds one hundred twenty (120) calendar days, Engineer shall have the right to terminate the Agreement. Engineer may exercise this right to terminate by issuing a written Notice of Termination to District, delivered in accordance with the Notice provisions contained in the Agreement after the

expiration of one hundred twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by District and such termination shall be subject to all the requirements set out in Paragraphs 6.5 and 6.6 above, related to the Orderly Transfer and Fee Payment.

7.3 Procedures upon Receipt of Notice of Suspension.

7.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Engineer shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of the Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Agreement.

7.3.2 Engineer shall prepare a statement showing in detail the services performed under the Agreement prior to the effective date of suspension.

7.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under the Agreement prior to the effective date of suspension shall be prepared for possible delivery to District but shall be retained by Engineer until such time as Engineer may exercise the right to terminate.

7.3.4 During the period of Suspension, Engineer shall have the option to at any time submit the above referenced statement to District for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of District under the Agreement, adjusted for any previous payments of the fee in question.

7.3.5 In the event Engineer exercises its right to terminate the Agreement at any time after the effective Suspension date, Engineer shall submit, within forty-five (45) calendar days after receipt by District of Engineer's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under the Agreement prior to the effective date of suspension. Failure by Engineer to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Engineer of any and all right or claims to collect moneys that Engineer may rightfully be otherwise entitled to for services performed pursuant to the Agreement.

7.3.6 Upon the above conditions being met, District's review of the submissions and finding the claimed compensation to be appropriate to the terms of the Agreement, District shall pay Engineer that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under the Agreement to the benefit of District, adjusted for any previous payments of the fee in question.

VIII. INSURANCE REQUIREMENTS

8.1 Engineer shall provide and maintain in effect during the performance of the work under the Agreement insurance of the following types and with indemnification limits not less than the amounts indicated:

Worker's Compensation:
(Including Waiver of Subrogation Endorsement)

All liability arising out of Consultant's employment of workers and anyone for whom Consultant shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.

Employer's Liability:

\$1,000,000.00

Commercial General Liability:

Occurrence	\$1,000,000.00
Aggregate	\$2,000,000.00
Personal Injury	\$1,000,000.00 each person

Automobile Liability:

\$1,000,000.00 combined single limit

Professional Liability:

\$1,000,000.00 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services. If written on a claims made basis, Consultant shall provide coverage for an additional sixty (60) months after the Final Completion date of the contract.

8.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued and a company rated no less than A-VII in the most current edition of Best's Rating Manual at all times during the term of the Agreement. District's representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

8.3 The Commercial General Liability and Automobile policies issued in the name of Engineer shall also name the Owner as additional insured. Evidence of additional insured status will be provided to District by providing a copy of the endorsement being utilized to effectuate the addition and shall be subject to District's reasonable approval.

8.4 It is the intent of the parties to the Agreement that the General Liability coverage provided herein shall be primary to and shall seek no contribution from all insurance available to District, with District's insurance being excess, secondary, and non-contributing. The Commercial General Liability coverage shall be endorsed to provide such primary and non-contributing liability.

8.5 Engineer shall have its insurance carrier(s) furnish to District insurance certificates in form satisfactory to District at a minimum specifying the types and amounts of coverage in effect and listing all exclusions and limitations added by endorsement to the general liability insurance coverage the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the work is in progress without thirty (30) calendar days prior written notice to District, and a statement that, except for professional liability insurance, District is named as additional insured. Engineer shall permit District to examine the insurance policies, or at District's option, Engineer shall furnish District with copies, certified by the carrier(s), of insurance policies required. If Engineer neglects or refuses to provide any insurance required herein, or if any insurance is canceled, District may, but shall not be obligated to, procure such insurance at Engineer's expense.

8.6 Insurance provided pursuant to this Section shall be considered a part of Engineer's basic services and shall not be a Reimbursable Expense within the scope of the Agreement.

8.7 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by District, Engineer shall notify District of such and shall give such notices not less than thirty (30) calendar days prior to the change, if Engineer knows of said change in advance, or fourteen (14) calendar days' notice after the change, if Engineer did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to District at the following address:

**Willis Independent School District
Attn: Superintendent of Schools
612 N. Campbell St.
Willis, TX 77378**

8.8 If Engineer fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, District may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by District is an alternative to other remedies District may have, and is not the exclusive remedy for failure of Engineer to maintain said insurance or secure such endorsement. In addition to any other remedies District may have upon Engineer's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, District shall have the right to order Engineer to stop work hereunder, and/or withhold any payment(s) which become due to Engineer hereunder until Engineer demonstrates compliance with the requirements hereof. A stop work order given to Engineer by District in accordance with this Article shall not constitute a Suspension of Work under the Agreement.

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which Engineer may be held responsible for payments of damages to persons or property resulting from Engineer's or its subcontractors' performance of the work covered under the Agreement.

IX. INDEMNIFICATION

9.1 Engineer (for purposes of this Section referred to as Licensed Engineer) whose work product is the subject of this contract for engineering services and other related professional services, agrees to INDEMNIFY AND HOLD DISTRICT, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY LICENSED ENGINEER'S NEGLIGENT ACT, ERROR, OR OMISSION OF LICENSED ENGINEER, ANY AGENT, OFFICER, DISTRICT'S REPRESENTATIVE, EMPLOYEE, ENGINEER OR SUBENGINEER OF LICENSED ENGINEER AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, AND DISTRICT'S REPRESENTATIVES** while in the exercise of performance of the rights or duties under the Agreement.

9.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of District, its trustees, officers, or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LICENSED ENGINEER AND DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO DISTRICT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

9.3 Licensed Engineer shall promptly advise District, in writing, of any claim or demand against District or Licensed Engineer known to Licensed Engineer related to or arising out of Licensed Engineer activities under the Agreement.

9.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or other wise, to any other person or entity.

X. ENGINEER'S LIABILITY AND STANDARD OF CARE

10.1 Services provided by Engineer under the Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently

practicing under similar circumstances. Acceptance of reports or other documents by District shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, inspection, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by District for any defect or error in testing, inspections, reports, or assessments and work performed by Engineer, its employees, subcontractors, and agents.

XI. ENGINEER'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

11.1 Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Engineer to solicit or secure the Agreement, and that it has not, for the purpose of soliciting or securing the Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Engineer, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of the Agreement. For breach of the foregoing warranty, District shall have the right to terminate the Agreement under the provisions of the Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Engineer found in breach of such warranty, by a final judgment of a Court of Competent Jurisdiction, shall take no compensation under the Agreement for any services rendered and such forfeiture shall not bar District from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. The Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing District employment of engineering and other professionals. Accordingly, Engineer further pledges and warrants its best and most competent professional efforts to secure to District the benefits of the agreement.

XII. ASSIGNMENT OF RIGHTS OR DUTIES

12.1 By entering into the Agreement, District has approved the use of subcontractors, if any, identified in Engineer's Proposal. No further approval shall be needed for Engineer to use such subcontractors as are identified in Engineer's Proposal.

12.2 Except as otherwise required herein, Engineer may not sell, assign, pledge, transfer or convey any interest in the Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of District. Engineering services required by law to be performed by a licensed engineer, or services, which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of District. Any other services to be performed under the Agreement may be subcontracted upon the written approval of District's representative. As a condition of consent, if same is given, Engineer shall remain liable for completion of the services outlined in the Agreement in the event of default by the successor Engineer, assignee, transferee or subcontractor. Any references in the Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by District in accordance with this Article.

12.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under the Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Engineer assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under the Agreement, District may, at its option, terminate the Agreement as provided herein, and all rights, titles and interest of Engineer shall thereupon cease and terminate, notwithstanding any other remedy available to District under the Agreement. The violation of this provision by Engineer shall in no event release Engineer from any obligation under the terms of the Agreement, nor shall it relieve or release Engineer from the payment of any damages to District, which District sustains as a result of such violation.

12.4 Engineer agrees to notify District's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) calendar days in

advance of the effective date of such change. Notwithstanding any other remedies that are available to District under the Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of the Agreement in accordance with Article IV, Termination.

XIII. INDEPENDENT CONTRACTOR

13.1 Engineer covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of District; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between District and Engineer, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between District and Engineer.

13.2 For purposes of the Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) the Agreement only affects matters/disputes between the Parties to the Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with District or Engineer or both, or that such third parties may benefit incidentally by the Agreement; and (2) the terms of the Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either District or Engineer.

XIV. NOTICES

14.1 Unless otherwise expressly provided elsewhere in the Agreement, any election, notice or communication required or permitted to be given under the Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for District, to:

Willis Independent School District
Attn: Superintendent of Schools
612 N. Campbell St.
Willis, TX 77378

If intended for Engineer, to:

ECS Southwest, LLP
Attn: Robert Mashewske, PE / Exec. VP
1000 N. Post Oak Rd., Ste. 240
Houston, TX 77055

XV. WORK ON SCHOOL DISTRICT PREMISES

15.1 To the extent that the work may, of necessity, be performed in connection with an educational facility which is currently occupied and in use, it is imperative that Engineer's operations and the performance of the work not interfere with, interrupt, disturb, or disrupt District's normal operations or facilities. Engineer agrees to and shall comply with all rules, regulations and requirements of District and the school campus on which the work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of District. Engineer shall exercise the utmost skill and judgment to ensure that continuing testing and inspection activities will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Engineer recognizes that the ongoing District activities in proximity with its activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Engineer. Engineer understands and accepts the difficulties and the costs associated with working in an existing facility and the potential delays and disruptions in its work and has considered such constraints in the negotiation of this contract.

15.2 Engineer shall be responsible for the actions of Engineer's agents, employees and all sub-Engineers working under it. Engineer agrees that if the Project Site is a public-school campus, it shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of Engineer's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of Engineer, or employees or students of District by employees of Engineer is strictly forbidden. Any employee of Engineer who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Engineer, including removal from the job site.

15.3 Engineer agrees, prior to commencement of work, to provide assurance to District that all employees, subcontractors of Engineer *who are likely to or will have contact with students* have passed a criminal history background check current within the last year.

XVI. CONTRACT CONSTRUCTION

16.1 All parties have participated fully in the review and revision of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of the Agreement.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

17.1 Engineer represents that, prior to signing the Agreement; Engineer has become thoroughly acquainted with all matters relating to the performance of the Agreement, all applicable laws, and all of the terms and conditions of the Agreement.

XVIII. APPLICABLE LAW AND VENUE

18.1 The Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

18.2 The obligations of the parties to the Agreement shall be performable in Willis, Montgomery County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Montgomery County, Texas.

XIX. SEVERABILITY

19.1 In the event any one or more paragraphs or portions of the Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of the Agreement, but such shall be confined to the specific section, sentences, clauses or portions of the Agreement held invalid or unenforceable.

XX. FORCE MAJEURE

20.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXI. SUCCESSORS

21.1 The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, and, except as otherwise provided in the Agreement, their assigns.

XXII. NON-WAIVER OF PERFORMANCE

22.1 A waiver by either Party of a breach of any of the terms, conditions, covenants, or guarantees of the Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of the Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of the Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

22.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIII. PARAGRAPH HEADINGS

23.1 The headings of the Agreement are for the convenience of reference only and shall not affect, in any manner, any of the terms and conditions hereof.

XXIV. LEGAL AUTHORITY

24.1 The signer of the Agreement for District and Engineer each represents, warrants, assures, and guarantees that he has full legal authority to execute the Agreement on behalf of District and Engineer respectively, and to bind District and Engineer to all of the terms, conditions, provisions, and obligations herein contained.

XXV. OTHER TERMS AND CONDITIONS

25.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

25.2 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Construction Manager certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

25.3 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

25.4 Pursuant to Texas Government Code Chapters 2276 and 809, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

25.5 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This section does not apply to a sole proprietorship.

XXVI. ENTIRE AGREEMENT

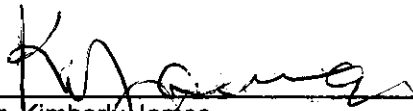
26.1 The Agreement, together with its exhibits and/or attachments embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties.

26.2 It is understood and agreed by the Parties hereto that changes in local, state, or federal rules, regulations or laws applicable hereto may occur during the term of the Agreement and that any such changes shall be automatically incorporated into the Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

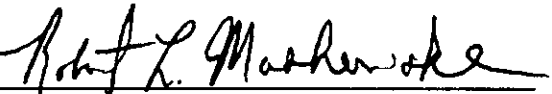
[Signature Page to Follow]

Executed on this, the 4 day of April 2025.

DISTRICT:
WILLIS INDEPENDENT SCHOOL DISTRICT

By: 
Dr. Kimberly James,
Superintendent of Schools

ENGINEER:
ECS Southwest, LLP

By: 
Robert L. Mashewske, PE
SW Executive Vice President / Regional Manager