

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE ENGINEERING INSPECTION AND TESTING SERVICES AGREEMENT BETWEEN THE TOWN OF ADDISON AND ALLIANCE GEOTECHNICAL GROUP, INC. FOR ADDISON ROAD MATERIALS INSPECTION AND TESTING SERVICES, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** The Engineering Inspection and Testing Services Agreement between the Town of Addison and Alliance Geotechnical Group, Inc. for Addison Road materials inspection and testing services, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 14<sup>th</sup> day of July, 2015.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Chelsea Gonzalez, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

## Engineering Inspection & Testing Services Agreement

This Engineering Inspection & Testing Services Agreement (“Agreement”) is made by and between Alliance Geotechnical Group, Inc. (AGG) with an address at 3228 Halifax Street, Dallas, TX 75247 and The Town of Addison with an address at 16801 Westgrove Drive, Addison, TX 75001 (hereinafter referred to as “CLIENT”). This Agreement consists of the following documents, which are incorporated herein by reference:

- Exhibit “A” AGG’s Proposal to CLIENT dated June 1, 2015
- Exhibit “B” Fee Schedule
- Exhibit “C” Insurance Requirements

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

**1. SCOPE OF SERVICES:** This Agreement anticipates the execution of the attached proposal for materials inspections and testing services and sets forth the terms and conditions pursuant to which AGG will provide CLIENT the services (“Services”) specified in AGG’s Proposal. AGG will provide CLIENT Services for no less than the duration of the construction activity related to the Addison Road Rehabilitation Project, as determined by client.

**2. STANDARD OF CARE:** AGG will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of AGG’s profession practicing in the same locality, under similar conditions and at the date the services are provided. Due to limitations in current technology, no level of assessment can conclusively determine whether a property or its structures are completely free of geotechnical hazards or hazardous substances (including mold). CLIENT is advised to carefully review any other pertinent limitations described in the Proposal or in the scope of Services. If included in the Services, AGG’s Services during construction will be limited to observation and testing of construction operations. AGG will not be responsible for constant or exhaustive inspection of the work, the means and methods of construction or the safety procedures employed by others unless employed by AGG as a subcontractor. Performance of construction observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies, or omissions may occur. Parties agree that, before exercising any other remedy for any alleged breach by AGG of the standard of care hereunder, CLIENT will direct AGG in writing to re-perform any defective Services. AGG will only sign certifications if approved by AGG in writing prior to start of Services. CLIENT understands that any such certifications are statements of professional opinion only. AGG makes no other representation, guarantee, or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided under this Agreement.

**3. AGG’S RESPONSIBILITIES:** AGG will perform the Services as an independent contractor and shall not act as an agent or employee of CLIENT. AGG shall be solely responsible for the conduct of its own employees and for any of its employees’ compensation, benefits, contributions, and payroll taxes. AGG will, as directed by CLIENT or its agent (i) provide qualified staff to perform the Services specified in the Work Order; (ii) maintain records of Project site activities and costs for a period of three (3) years from completion of AGG’s services; (iii) work, to the extent reasonably possible, in coordination with CLIENT’s employees,

contractors, consultants and other site staff so as not to impede the progress of the Project; and (iv) require its personnel to maintain a safe, clean and orderly work environment.

**4. TERM AND TERMINATION:** The term of this Agreement shall commence on the date of execution of this Agreement by CLIENT, and shall continue in effect for a period of six (6) months, through the duration of the construction activity for the Addison Road Rehabilitation Project as determined by the CLIENT or until terminated by either party as provided herein. Either party may terminate this Agreement at any time, with or without cause, by providing not less than ten (10) days advance written notice to the other party. Notwithstanding the termination of this Agreement, this Agreement will survive until all of the rights and obligations of both Parties hereunder have been fulfilled. CLIENT shall compensate AGG for all Services performed hereunder through the date of any termination.

**5. COMPENSATION:** AGG will be compensated for its Services in accordance with the schedule of fees attached hereto as Exhibit "B", and incorporated herein for all purposes. CLIENT agrees to provide any invoice format and contents requirements to AGG in advance of signing this Agreement if requested by AGG. Additional charges may apply to any contracting or invoicing specifications outside of AGG's standard procedures. CLIENT understands that time-and- materials pricing should be construed as an estimate only and that true costs may be higher or lower, depending on actual circumstances. AGG shall submit its invoices for Services rendered to CLIENT monthly. The terms of payment are net thirty (30) days from date of invoice, with a one and one-half percent (1.5%) per month service charge on balances past due. Interest on amounts that are past due shall be computed from the initial date of invoice. AGG may suspend performance of Services under this Agreement until AGG has been paid in full for all balances past due, including applicable service charges. AGG shall be entitled to recover all its attorney's fees and costs resulting from its efforts to secure payment from Client.

**6. INSURANCE:** AGG agrees to satisfy the CLIENTS insurance requirements attached hereto as Exhibit "C", and incorporated herein for all purposes.

**7. CHANGES:** CLIENT or AGG may request changes to the scope of Services by altering, adding to, or deleting from the Services to be performed by AGG. Both Parties agree to negotiate in good faith to determine changes in scope and to execute an amended Agreement. Should the total cost of AGG's performance under this Agreement be greater than the estimated amount, AGG will notify CLIENT prior to performing the work. Failure by both parties to renegotiate in good faith the terms and conditions of the Agreement may result in suspension of work without penalties, and termination of this Agreement by either party.

**8. FORCE MAJEURE:** If the performance of Services by AGG is affected by causes beyond its reasonable control, Force Majeure shall result. Force Majeure includes acts of God; acts of a legislative, administrative, or judicial entity; acts of CLIENTs separate contractors and consultants; war; fires; floods; labor disturbances; and unusually severe or unanticipated weather.

**9. INSTRUMENTS OF SERVICE:** All reports, drawings, plans, or other documents (or copies) furnished to AGG by the CLIENT, shall, at CLIENT's written request, be returned upon completion of the Services; provided, however, that AGG may retain one (1) copy of all such documents for record keeping purposes. All reports, drawings, plans, documents, software, source code, object code, field notes and work product (or copies thereof) in any form prepared or furnished by AGG pursuant to this Agreement are instruments of service ("Instruments of Service"). Exclusive ownership, copyright and title to all such instruments of service shall be held jointly by AGG and CLIENT. The opinions and other information prepared or furnished by AGG under this Agreement, including, without limitation, its instruments of service, are not intended to inform, guide, or otherwise influence any entities or persons other than CLIENT with respect to any particular business transactions and should not be relied upon by any entities or persons other than CLIENT for any purpose. Any requests by third parties for reliance upon the Instruments of Service will be subject to advance approval at CLIENT'S and AGG's sole discretion and subject to the terms of AGG's then effective policy, which governs additional fees and limitations related thereto. AGG will not be responsible for damages resulting from any unauthorized use by CLIENT or others of the instruments of service furnished by AGG under this Agreement.

**10. CLIENTS RESPONSIBILITIES:** CLIENT agrees to: (i) convey and discuss with AGG all available material, data, and information pertaining to the Services, including, without limitation, the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, any hazards that may be present, the nature and location of underground or otherwise not readily apparent utilities, summaries and assessments of the site's past and present compliance status, and the status of any filed or pending judicial or administrative action concerning the site or Project; (ii) ensure the cooperation of CLIENT's employees and separate contractors and consultants

**11. ALLOCATION OF RISK:** Neither party shall be responsible to the other for any special, incidental, indirect, penal or consequential damages (including lost profits) incurred by either AGG or CLIENT or for which either party may be liable to any third party. The indemnity obligations and the limitation of liability established below shall survive the expiration or termination of this Agreement.

- A. INDEMNIFICATION OF CLIENT: SUBJECT TO THE PROVISIONS AND LIMITATION OF LIABILITY OF THIS AGREEMENT, AGG AGREES TO INDEMNIFY AND HOLD HARMLESS CLIENT, ITS SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY CLAIMS, SUITS, DAMAGES, EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, OR OTHER LOSSES (COLLECTIVELY "LOSSES") TO THE EXTENT CAUSED BY AGG'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.**
- B. ALL CLAIMS BY CLIENT AGAINST AGG SHALL BE DEEMED WAIVED UNLESS WRITTEN NOTICE OF THE CLAIM HAS BEEN PROVIDED TO AGG WITHIN ONE (1) YEAR OF KNOWLEDGE OF THE CLAIM. CLIENT AGREES THAT ANY CLAIM OR SUIT FOR DAMAGES MADE OR FILED AGAINST AGG BY CLIENT WILL BE MADE OR FILED SOLELY AGAINST AGG OR ITS SUCCESSORS OR ASSIGNS AND THAT NO SHAREHOLDER OR EMPLOYEE OF AGG SHALL BE PERSONALLY LIABLE TO CLIENT FOR DAMAGES UNDER ANY CIRCUMSTANCES. THIS LIMITATION OF LIABILITY APPLIES TO ANY AND ALL CLAIMS, NO MATTER HOW PLEADED, INCLUDING CLAIMS FOR ERRORS AND OMISSIONS, BREACH OF CONTRACT, NEGLIGENCE, OR BREACH OF FIDUCIARY DUTY AND APPLIES TO ALL PHASES OF SERVICES PERFORMED UNDER THIS AGREEMENT.**

- 12. NO CONTROL OF MEANS AND METHODS OF OTHERS:** AGG will not have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs of CLIENT's separate contractors and consultants in connection with the Project. AGG's services do not include any job site safety obligations required by the project or any applicable code or regulation.
- 13. SITE ACCESS:** CLIENT shall, as may be required by AGG for the successful and timely completion of Services: (i) provide unimpeded and timely access to the site, including third party sites, if required; (ii) provide an adequate area for AGG's site office facilities, equipment storage, and parking; (iii) furnish all construction utilities and utility releases necessary for the performance of the Services; and (iv) obtain Project-specific permits and licenses necessary for the performance of the Services.
- 14. WARRANTY OF TITLE, WASTE OWNERSHIP:** AGG does not take title to any hazardous materials found at the project site. Any risk of loss with respect to all materials shall remain with the project site owner, who shall be considered the generator of such materials, execute all manifests as the generator of such materials, and be liable for the arrangement, transportation, treatment, and/or disposal of all material. All samples shall remain the property of the CLIENT. CLIENT shall promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.
- 15. ASSIGNMENT AND SUBCONTRACTING:** This Agreement does not create any right or benefit to anyone other than CLIENT and AGG and shall not be assigned by either party without the prior written approval of the other party.
- 16. DISPUTE RESOLUTION:** If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, both Parties agree to attempt to resolve the claim or dispute (1) at a meeting between the principals within fifteen (15) days of receipt by either party of a notice and description of the dispute, and failing resolution (2) mediation in accordance with the AAA Construction Industry Mediation Rules then in effect within forty-five (45) days from service of written notice. If the claim or dispute cannot be resolved through mediation and unless otherwise mutually agreed, either party may file suit in an appropriate court in the state of the AGG office entering into this Agreement.
- 17. WAIVER OF TERMS AND CONDITIONS:** The failure of either Party in anyone or more instances to enforce one or more of the terms or conditions of this Agreement, or to exercise any right or privilege in this Agreement, or the waiver by AGG or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such waiver had occurred.
- 18. SEVERABILITY:** Every term or condition of this Agreement is severable from the others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.
- 19. GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Any suit arising out of this Agreement shall be brought in a court of appropriate jurisdiction in Dallas County, Texas.

20. **ENTIRE AGREEMENT:** The terms and conditions set forth herein constitute the entire understanding and agreement of both Parties with respect to the Services. Any amendment or revision to this Agreement shall be in writing and signed by an authorized representative from each party. Any oral modification or revision of this Agreement shall not operate to modify this Agreement.

In witness whereof, CLIENT and AGG have caused this Agreement to be executed by their respective duly-authorized representatives as of this \_\_\_\_ day of \_\_\_\_\_.

CLIENT

ALLIANCE GEOTECHNICAL GROUP, INC.

By: \_\_\_\_\_

By: 

Name: \_\_\_\_\_

Name: Robert P. Nance

Date: \_\_\_\_\_

Date: 7/8/15

**ATTACHMENTS:**

Exhibit "A" - AGG's Proposal to CLIENT dated June 1, 2015

Exhibit "B" - Fee Schedule

Exhibit "C" - Insurance Requirements



EXHIBIT "A"

- GEOTECHNICAL ENGINEERING
- ENVIRONMENTAL CONSULTING
- CONSTRUCTION MATERIALS ENGINEERING AND TESTING

June 1, 2015

Lisa Pyles  
 Director Infrastructure Operations and Services  
 Town of Addison  
 16801 Westgrove Dr.  
 P.O. Box 9010  
 Addison, Texas 75001

Office (972)-450-2878  
 Cell: (214)-546-6205

Re: **Addison Road Rehabilitation**  
**Addison, Texas**  
 Engineering Inspection & Testing Services  
 AGG Proposal No: P15-0608C

Ms. Pyles:

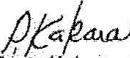
Alliance Geotechnical Group (AGG) is pleased to confirm our firm's interest in providing materials inspection and testing services for the proposed project noted above. A schedule of unit fees for this project is attached. Actual charges will be based on the contractors/client scheduling.

After reviewing our fee schedule if you have any questions, please contact the undersigned at (972) 444-8889. If acceptable, please sign below and fax back to our office as our Authorization to Proceed. We look forward to the opportunity of working with you on this project.

Respectfully submitted,

ALLIANCE GEOTECHNICAL GROUP

  
 Alan Thomas, C.E.T.  
 Project Manager

  
 Perry Kakara, S.E.T.  
 CME Department Manager

Approved by: \_\_\_\_\_  
 Signature

Date: \_\_\_\_\_



**EXHIBIT "B"**  
**SCHEDULE OF FEES**  
**FOR**

**CONSTRUCTION MATERIALS ENGINEERING & TESTING**  
**ADDISON ROAD REHABILITATION**                      **PROPOSAL NO. P15-0608CR**

DESCRIPTION OF SERVICES	QUANTITY	UNIT	UNIT FEE	UNIT	FEE
<b>A. <u>Spec Item Tx340 - Dense-Graded Hot-Mix Asphalt</u></b>					
• Asphalt Technician TXDot 1A (Overtime)	456	@	\$82.50	each	\$37,620.00
• Asphalt Technician TXDot 1B (Overtime)	364	@	\$82.50	each	\$30,030.00
• Vehicle Charge (1A)	38	@	\$40.00	each	\$1,520.00
• Vehicle Charge (1B)	38	@	\$40.00	each	\$1,520.00
				<b>Sub-Total</b>	<b>\$70,690.00</b>
<b>B. <u>Subgrade Preparation</u></b>					
• Engineering Technician (Overtime)	60	@	\$71.25	each	\$4,275.00
• Classification of Soils	3	@	\$60.00	each	\$180.00
• Atterberg Limits (Liquid/Plactic Limit)	3	@	\$60.00	each	\$180.00
• Lab Compaction Characteristics	3	@	\$165.00	each	\$495.00
• Density of Soil In-Place (Nuclear Method)	92	@	\$15.00	hour	\$1,380.00
• Nuclear Moisture	92	@	\$35.00	hour	\$3,220.00
• Vehicle Charge	23	@	\$40.00	trip	\$920.00
				<b>Sub-Total</b>	<b>\$6,375.00</b>
				<b>Total</b>	<b>\$77,065.00</b>

**NOTES:**

1. Overtime rates of 1.5 times the regular hourly rate will be charged for hours worked over eight (8) hours per day Monday thru Friday or any time **before 7:00 a.m. or after 5:00 p.m.** Service performed on Saturdays and Sundays will be billed at 1.5 times the regular hourly rate. Services performed on recognized holidays will be billed at 2.0 times the regular hourly rate.
2. All laboratory test fees are F.O.B. our laboratory; additional charge for sample pickup may apply.
3. Any additional tests will be billed on a hourly rate and charged at the applicable rate, portal-to-portal.
4. Additional test not specified in this proposal will be quoted upon request.
5. This proposal does not include any technician stand-by, non-readiness charges, and/or trips or re-tests of the previous failing tests. Our proposal does not include a compliance letter, but can be added if requested.

**\* Asphalt Assumptions**

- \* Type B Material - 5690 Tons
- \* Type D Material - 6085 Tons
- \* Typical Lot Size : Type B - 28 days prouction & Type D - 10 Day's Production
- \* Estimated Lots - 38 EA

**\* Soils Assumptions**

- \* Typical Lot Size : Each Full-Depth Area or 200 feet
- \* Estimated Lots - 28 EA
- \* Field Densities- Estimated 92 ea for the entire project
- \* All quantities were provided by The Town of Addison
- \* Asphalt TXDot 1A Technician time to include all lab tests.

**EXHIBIT "C"**

**TOWN OF ADDISON, TEXAS  
ADDISON ROAD PAVEMENT REHABILITATION**

**REQUIREMENTS**

Contractors performing work on TOWN OF ADDISON property or public right-of-way shall provide the TOWN OF ADDISON a certificate of insurance or a copy of their insurance policy(s) (and including a copy of the endorsements necessary to meet the requirements and instructions contained herein) evidencing the coverages and coverage provisions identified herein within ten (10) days of request from TOWN OF ADDISON. Contractors shall provide TOWN OF ADDISON evidence that all subcontractors performing work on the project have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor's policy. Work shall not commence until insurance has been approved by TOWN OF ADDISON.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must have a A.M. Best's rating A-VII or greater.

Listed below are the types and minimum amounts of insurances required and which must be maintained during the term of the contract. TOWN OF ADDISON reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

TYPE OF INSURANCE	AMOUNT OF INSURANCE	PROVISIONS
1. <b>Workers' Compensation Employers' Liability</b> to include: (a) each accident (b) Disease Policy Limits (c) Disease each employee	Statutory Limits per occurrence  Each accident \$1,000,000 Disease Policy Limits \$1,000,000 Disease each employee \$1,000,000	TOWN OF ADDISON, and GARVER, LLC to be provided a <u>WAIVER OF SUBROGATION AND 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-VII rated or above.
2. <b>Commercial General (Public) Liability</b> to include coverage for: a) Bodily Injury b) Property damage c) Independent Contractors d) Personal Injury e) Contractual Liability	Bodily Injury/Property Damage per occurrence \$1,000,000, General Aggregate \$2,000,000 Products/Completed Aggregate \$2,000,000, Personal Advertising Injury per occurrence \$1,000,000, Medical Expense 5,000	TOWN OF ADDISON, and GARVER, LLC to be listed as <u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-VII rated or above.
3. <b>Business Auto Liability</b> to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Combined Single Limit \$1,000,000 per occurrence for bodily injury and property damage	TOWN OF ADDISON, and GARVER, LLC to be listed as <u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-VII-rated or above.
4. <b>Umbrella or Excess Liability Policy over Commercial General Liability and Automobile Liability</b> limits of \$1 million per occurrence	Minimum \$4 million per occurrence excess \$1 million underlying per occurrence	TOWN OF ADDISON, and GARVER, LLC to be listed as <u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-VII-rated or above.

Certificate of Liability Insurance forms (together with the endorsements necessary to meet the requirements and instructions contained herein) may be **faxed** to the Purchasing Department: **972-450-7074** or **emailed to: [purchasing@addisontx.gov](mailto:purchasing@addisontx.gov)**. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

1. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
2. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
3. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name the Town of Addison and Garver, LLC as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
5. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Upon request, Contractor shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

This form must be signed and returned with your quotation. You are stating that you do have the required insurance and if selected to perform work for TOWN OF ADDISON, will provide the certificates of insurance (and endorsements) with the above requirements to TOWN OF ADDISON within 10 working days.

**A CONTRACT/PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE AND APPROVAL OF INSURANCE.**

**AGREEMENT**

I agree to provide the above described insurance coverages within 10 working days if selected to perform work for TOWN OF ADDISON. I also agree to require any subcontractor(s) to maintain insurance coverage equal to that required by the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The Town accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

Project/Bid# \_\_\_\_\_

Company: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_