



LETTER AGREEMENT

March 7, 2017

Purchasing Office
Brown County
200 S. Broadway
Brownwood TX 76801

SUBJECT: Letter Agreement for Professional Services :

AECOM Technical Services ("AECOM") desires to provide services to Brown County ("Client") in connection with "Scope of Work to Provide FEMA Floodplain Analysis Assistance" ("Project"), under the terms described below.

The services AECOM will perform for Client and the estimated time for performance are described in AECOM's proposal attached hereto as Exhibit "A" of this letter. Payment shall be made to AECOM as follows:

- 1. Method of Compensation: Lump Sum
2. Amount of Compensation: \$3,000.

All services will be performed in accordance with the Terms and Conditions for Professional Services, attached hereto as Exhibit "B" of this letter.

AECOM looks forward to working with you on this Project. If the terms of this agreement are acceptable, please sign this letter in the space provided below and return it to me by \_\_\_\_\_, 20\_\_\_\_.

Very truly yours,

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

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

Title: \_\_\_\_\_

This Agreement is accepted by Brown County this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

Title: \_\_\_\_\_

March 13, 2017
(Exhibit #1)

## EXHIBIT B

March 7, 2017

Purchasing Office  
Brown County  
200 S. Broadway  
Brownwood TX 76801  
ATTN: Joel Kelton, County Commissioner

RE: Scope of Work to Provide FEMA Floodplain Analysis Assistance for CR477 and Gap Creek

Commissioner Kelton:

This proposal is a follow-on to our phone discussion concerning the crossing of Gap Creek by County Road (CR) 477 in Brown County. The culvert located at this crossing has been repeatedly washed out and the County's intent is to replace the culvert with a low water crossing. In order to have Federal Emergency Management Agency (FEMA) participation in the cost of this replacement, the County requires a certification by a Professional Engineer (PE) that the replacement does not negatively impact flood elevations upstream or downstream of the crossing relative to the condition prior to the washout.

The regulatory floodplain is a Zone A (approximate) floodplain in FIRM panel number 4807170004B dated 3/01/1991. In an email communication with Marvin Davis, NISTAC, a contractor for Public Assistance for FEMA on March 3, Mr. Davis noted "FEMA for its review would need just a simple H&H [hydrologic and hydraulic analysis] that shows no adverse effects to the area when switching from a culvert to a LWC [low water crossing]."

The proposed scope of work is for the cited "simple H&H" analysis. This scope of work assumes that the County will provide the following:

- A survey of the crossing in its existing condition. This will include 1) a cross-section through the washed out road; 2) a cross-section at the edge of the County ROW on the upstream side of the crossing; and 3) a cross-section at the edge of the County ROW on the downstream side of the crossing. If no local datum is available for tie-in of the survey, a survey relative to a fixed point on/ adjacent to the CR will suffice;
- An estimate of the diameter, slope, length, and invert elevation (same datum as survey)
- A markup on the surveyed road cross-section of 1) the approximate trace of the road before the washout; and 2) an approximate trace of the proposed low water crossing, with size and invert elevation (per survey datum) of culvert proposed (if any) for low flows.

The scope of work, given the above, will include:

- Estimation of 100-year flowrate in Gap Creek at the CR477 crossing using regression equations in USGS WRIR 96-4307. This will involve estimating the basin area, basin shape factor and stream slope of the watershed above the crossing;

- Estimation of 100-year flow depth above the crossing for 1) the pre-washout condition; and 2) the proposed low water crossing. The analysis will be performed using CulvertMaster, with option of delineation of an overtopping weir by a roadway.
- Preparation of a letter to FEMA documenting effects of the proposed low crossing on flood elevations upstream or downstream of the crossing relative to the condition prior to the washout. The letter will be stamped by a PE licensed in the State of Texas.

Per AECOM's understanding of the situation, the future low water crossing will open up creek flow area previously blocked by the pre-washout road with culvert. In this situation, flood elevations upstream of the road can only be lowered, and downstream flood elevations will be unaffected. If the survey and proposed future low water crossing provided by the County do not show a clear increase in flow area at the crossing, AECOM will have a discussion with the County prior to initiating analysis.

### **Schedule**

AECOM will provide the letter to FEMA within 2 weeks of receipt of the information described above from the County.

### **Fee**

AECOM proposes a lump sum fee of \$3,000 for the above scope of work. This fee will include a trip to Brown County, if requested, to discuss the project deliverable.

If you have any questions concerning this Scope of Work, please call me at 512-658-0856 (cell).

Jeff Irvin, PE  
Principal Engineer  
AECOM



**Exhibit B**  
**AECOM Technical Services**  
**Terms and Conditions for Professional Services (Non-Environmental)**  
**When Contract Value is \$50,000 or less**

**1. DEFINITIONS**

"Client" shall mean the person, firm, or corporation identified in the AECOM Proposal for whom Services are to be performed.

"AECOM" shall mean AECOM Technical Services.

"Client Order" shall mean the purchase order, request, authorization, or other notification, and any addition or modification thereto, whereby Client indicates its desire that AECOM furnish Services.

"AECOM Proposal" shall mean the letter, proposal, quotation, or other notification, including any response to the Client Order, wherein AECOM offers to furnish Services.

"Services" shall mean the Services of AECOM personnel described in the AECOM Proposal or Client Order and any other Services as may be added to or performed in connection with this Agreement.

"Agreement" shall mean these Terms and Conditions and the AECOM Proposal, and shall include, only to the extent consistent with the AECOM Proposal and these Terms and Conditions, the provisions of the Client Order. In the event of a conflict between any terms and conditions deemed to be part of the Agreement and these Terms and Conditions, these Terms and Conditions shall govern.

**2. STANDARD OF PERFORMANCE**

The standard of care for all professional engineering, consulting, and related Services performed or furnished by AECOM and its employees under this Agreement will be the care and skill ordinarily used by members of AECOM's profession practicing under the same or similar circumstances at the same time and in the same locality. AECOM makes no warranties, express or implied, in connection with the Services, including any warranties of merchantability or fitness for a particular purpose.

**3. INSURANCE**

AECOM agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$1,000,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of Services under this Agreement caused by negligent acts, errors, or omissions for which AECOM is legally liable. Upon request, Client shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the Client.

**4. OPINIONS OF PROBABLE COST (COST ESTIMATES)**

Any opinions of probable material or equipment cost, or probable construction cost, provided by AECOM, are made on the basis of information available to AECOM, and represents its judgment as an experienced and qualified professional engineer. However, since AECOM has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, AECOM does not guarantee that proposals, bids or actual equipment, materials, or construction cost will not vary from opinions of probable cost AECOM prepares.

**5. CONSTRUCTION PROCEDURES**

AECOM' observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. AECOM shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the

work, and shall not manage, supervise, control or have charge of construction. AECOM shall not be responsible for the acts or omissions of the contractor or other parties on the project.

**6. CONTROLLING LAW**

This Agreement is to be governed by the law of the state where AECOM Services are performed.

**7. OWNER RESPONSIBILITIES**

Without limiting any express or implied obligations of Client under applicable law, Client shall: (1) provide AECOM, in writing, all information relating to Client's requirements for the project; (2) correctly identify to AECOM the location of subsurface structures, such as pipes, tanks, cables, and utilities; (3) notify AECOM of any potential hazardous substances or other health and safety hazard or condition known to Client existing on or near the project site; (4) give AECOM prompt written notice of any suspected deficiency in the Services; (5) with reasonable promptness, provide required approvals and decisions; and (6) furnish or cause to be furnished to AECOM full, unrestricted and legal access to, and use of, the site and all necessary rights of way and easements, in order to perform the Services. Client agrees to bear full responsibility for the accuracy and completeness of all documents, information, or services supplied by Client. Client acknowledges that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

**8. SUCCESSORS AND ASSIGNS**

Client and AECOM, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither Client nor AECOM will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

**9. DOCUMENTS AND INTELLECTUAL PROPERTY**

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by AECOM pursuant to this Agreement, are instruments of service with respect to the project. AECOM retains ownership of all such documents. Client may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by Client or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by AECOM for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to AECOM, and Client will defend, indemnify and hold harmless AECOM from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle AECOM to further compensation at rates to be agreed upon by Client and AECOM.

**10. TERMINATION OF AGREEMENT**

Client or AECOM, after having afforded the other party a reasonable opportunity to cure, may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all Services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for cancellation charges and other termination settlement costs AECOM incurs as a result of commitments that had become firm before termination, and for a reasonable profit for Services performed.

#### 11. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

#### 12. INVOICES

AECOM will submit monthly invoices for Services rendered and Client will make prompt payments in response to AECOM' invoices.

AECOM will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by Client's auditors upon request.

If Client disputes any items in AECOM' invoice for any reason, including the lack of supporting documentation, Client may temporarily delete the disputed item but shall pay all undisputed items appearing in the invoice.

Client will promptly notify AECOM of the dispute and request clarification and/or correction. After any dispute has been settled, AECOM will include the disputed item on a subsequent, regularly-scheduled invoice or on a special invoice for the disputed item only.

Client recognizes that late payment of invoices results in extra expenses for AECOM. AECOM retains the right to assess Client interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of AECOM' invoices are not paid when due, AECOM also reserves the right to suspend the performance of its Services under this Agreement until all past due amounts have been paid in full.

#### 13. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of Services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. As the project progresses, the facts developed may dictate a change in the Services to be performed, which may alter the scope. AECOM will inform Client of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional Services, or suspension of Services results in an increase or decrease in the cost of or time required for performance of the Services, an equitable adjustment shall be made, and the Agreement modified accordingly.

#### 14. HAZARDOUS MATERIALS

It is acknowledged by both parties that the Services do not include services related to regulated substances, pollutants, or hazardous or toxic wastes ("Hazardous Material"). In the event AECOM or any other party encounters undisclosed Hazardous Materials, AECOM shall notify Client and, to the extent required by law or regulation, the appropriate governmental officials, and AECOM may, at its option and without liability for delay, consequential or any other damages to Client, suspend performance of Services on that portion of the project affected by Hazardous Material until Client: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous material; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations.

If Services hereunder cannot be performed because of the existence of hazardous materials, AECOM shall be entitled to terminate this Agreement for cause on 30 days written notice.

#### 15. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between AECOM and Client, and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

#### 16. NO CONSEQUENTIAL DAMAGES

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CLIENT NOR AECOM SHALL BE LIABLE, WHETHER LIABILITY ARISES FROM NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, OR ANY OTHER THEORY OF RECOVERY, FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND AECOM HEREBY RELEASES CLIENT AND CLIENT HEREBY RELEASES AECOM FROM ANY SUCH LIABILITY.

#### 17. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF AECOM, ITS SUBCONSULTANTS, AND ITS EMPLOYEES TO CLIENT FOR ANY LOSS OR DAMAGE ARISING OUT OF THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE ARISING FROM NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, OR ANY OTHER THEORY OF RECOVERY, SHALL NOT EXCEED \$50,000 FOR SERVICES PERFORMED UNDER THIS AGREEMENT, AND CLIENT HEREBY RELEASES AECOM, ITS SUBCONSULTANTS, AND ITS EMPLOYEES FROM ANY LIABILITY ABOVE SUCH AMOUNT.

#### 18. LITIGATION SUPPORT

In the event AECOM is required to respond to a subpoena, government inquiry or other legal process related to the Services in connection with a legal or dispute resolution proceeding to which AECOM is not a party, Client shall reimburse AECOM for reasonable costs in responding and compensate AECOM at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

#### 19. NO THIRD PARTY BENEFICIARIES

This Agreement shall not create any rights or benefits to parties other than Client and AECOM. No third party shall have the right to rely on AECOM opinions rendered in connection with the Services without AECOM' written consent and the third party's agreement to be bound to such terms and conditions as AECOM, in its sole discretion, agrees to offer.

#### 20. FORCE MAJEURE

Any delay or failure of AECOM in performing its required obligations hereunder shall be excused if and to the extent such delay or failure is caused by a Force Majeure Event. A "Force Majeure Event" means an event due to any cause beyond the reasonable control of AECOM and shall include, but not be limited to, acts of God, strike, labor dispute, fire, storm, flood, windstorm, unusually severe weather, sabotage, embargo, terrorism, energy shortage, accidents or delay in transportation, accidents in the handling and rigging of heavy equipment, explosion, riot, war, court injunction or order, delays by acts or orders of any governmental body or changes in laws or government regulations or the interpretations or application thereof or the acts or omissions of the Client or its other contractors, vendors or suppliers. In the event of a Force Majeure Event, AECOM shall receive an equitable adjustment extending AECOM' time for performance sufficient to overcome the effects of any delay, and an increase(s) to AECOM' compensation sufficient to account for any increased cost in performance or loss or damage suffered by AECOM. If Services are suspended for thirty (30) days or more, AECOM may, in its sole discretion, upon 5 days prior written notice, terminate this Agreement. In the case of such termination, in addition to the compensation and time extension set forth above, AECOM shall be compensated for all reasonable termination expenses.

#### 21. SURVIVAL

The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion, or expiration of the Agreement, including, but not limited to, any expressed limitations of, or releases from, liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion, or expiration.

## Joel Kelton

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**From:** Irvin, Jeff <jeff.irvin@aecom.com>  
**Sent:** Tuesday, March 07, 2017 11:27 AM  
**To:** joel.kelton@browncountytexas.org  
**Subject:** draft contract and SOW  
**Attachments:** AECOM Letter Agreement for Professional Services for Brown County.doc; AECOM Terms and Conditions for Professional Services under \$50000 (03-07-2017).doc; EXHIBIT B Scope of Work Brown County.docx

Joel,

AECOM does not process anything rapidly, and every step has to go through cascading approvals. I am hung up on the first step (adding a new client into our database). I should be able to send you this formally tomorrow COB.

Please call or email me if you have comments. Who do you want to be the client contact in our database (typically someone from purchasing)?

Jeff