Ivins City Staff Report
City Council Meeting 12/17/20

Agenda Item: Discuss and consider approval of an expenditure in the amount of $21,989 to AGEC for testing relating to the new City Hall.

Submitted by: Thomas Jorgensen, P.E., Assistant Public Works Director

Recommended City Council Action:
Approve expenditure of $21,989 for testing relating to new City Hall.

BACKGROUND:
The special inspection services for the City Hall were not included in with the contractor's agreement. Therefore, the City needs to enter into an agreement with AGEC for the required special inspections for the new City Hall. See the attached agreement for more information.

FINDINGS AND ANALYSIS:
Staff, Hughes General Contractors, and VCBO have all reviewed the agreement and staff is recommending that Council approve the expenditure in the amount of $21,989 for testing relating to the new City Hall.

SUPPORT MATERIALS:
Agreement AGEC

FINANCIAL IMPACT:
These fees will be added to the total cost of the New City Hall project costs.

Respectfully Submitted:

Thomas Jorgensen, P.E., Assistant Public Works Director

Content Review:

Dale Coulam, City Manager

AUTHORIZATION FOR SERVICES

AGEC Project No. 2201962
Client Name (Invoice to): Hughes General Contractors, Inc.
Attention: Tim Sobotka
Address: 62 West Industrial Drive
Washington, Utah 84780
Telephone: N/A

AGEC
Applied GeoTech

Project Name: Ivins City Hall
Location of Project: Ivins, Utah
Copies of Reports To: Tim Sobotka

EXHIBIT A - FEES

The Fees for these services will be billed at Unit Rates per the attached Exhibit A

Special Instructions: N/A

AGEC Employee: Arnold DeCastro, P.E. Date: 9/30/2020

Signature: Title: Project Engineer

EXHIBIT B - SCOPE OF WORK/SERVICES

As listed in Exhibit A.

All agreements contingent upon strikes, accidents or delays beyond our control and as set forth in the terms and conditions attached.

AGREEMENT

The scope of services stated above will be provided under appropriate standard of care including the skill and judgment that can be reasonably expected from similarly situated individuals. Fees for the services are listed above or on the attached fee schedule (Exhibit A) for acceptance and authorization for payment by the client where other contractual arrangements are not in effect. Any alteration or deviation from the approved scope of services will be executed only upon approval of written notice and/or addendum hereto clearly outlining additions/deletions inconsideration of scope of fees. Payment for services will be paid ☐ In advance ☒ Due upon invoicing.

The undersigned, acting in behalf of the client, has hereby reviewed the above scope of services and related fees, including payment thereof, in addition to the terms and conditions attached to this form hereby authorizes **Applied Geotechnical Engineering Consultants, Inc.** to proceed and accepts responsibility for payment as noted.

Client: HUGHES GENERAL CONTRACTORS Date:

By: Title:

Comments: N/A

APPLIED GEOTECHNICAL ENGINEERING CONSULTANTS, INC.
STANDARD TERMS AND CONDITIONS
(Materials Engineering)

The standard terms and conditions set forth herein are attached to and made a part of the Materials Engineering Services Agreement (the "AGREEMENT") between Applied Geotechnical Engineering Consultants, Inc., a Utah corporation ("AGEC"), and CLIENT (as defined in the AGREEMENT).

All capitalized terms which are not specifically defined herein shall have the meanings assigned to such terms in the AGREEMENT.

ARTICLE 1. SERVICES. The SERVICES to be provided by AGEC are limited to and shall be as set forth in the SCOPE OF SERVICES attached to the AGREEMENT as Exhibit A. Unless otherwise provided in the SCOPE OF SERVICES, the SERVICES shall be provided in accordance with the following:

a. AGEC shall provide only those services that, in the opinion of AGEC, lie within the technical or professional areas of expertise of AGEC and which AGEC is adequately staffed and equipped to perform.

b. AGEC shall perform all technical services under the general direction of a Registered Professional Engineer and in substantial accordance with the basic requirements of the appropriate Standards of The American Society for Testing and Materials, where applicable, or other standards designated by CLIENT.

c. AGEC shall promptly submit formal reports of all tests, inspections and services performed indicating, where applicable, compliance with the PROJECT specifications or other contract documents. Such reports shall be complete and factual, citing the tests performed, methods employed, values obtained, parts of the structure or the PROJECT area involved.

d. AGEC shall employ testing machines which have been calibrated within a period not exceeding twelve (12) months from the time of use. The accuracy of devices used in such calibration shall be traceable to the National Bureau of Standards of the United States Department of Commerce. Upon written request by CLIENT, AGEC, shall submit to CLIENT, or its authorized representative, documentation of such calibration.

ARTICLE 2. STANDARD OF CARE–LIMITATION OF DAMAGES. The SERVICES shall be performed in accordance with generally accepted engineering principles and practices existing at the time of performance for the locality where the SERVICES were performed. AGEC will re-perform, without additional charge, any SERVICE which does not meet this standard. EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 2, AGEC MAKES NO GUARANTEES OR WARRANTIES CONCERNING SERVICES, AND NO OTHER GUARANTEES OR WARRANTIES MAY BE IMPLIED. IN ADDITION, NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, AGEC SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR CONSEQUENTIAL OR SPECIAL DAMAGES.

ARTICLE 3. PERMITS AND LICENSES. CLIENT represents and warrants that it possesses all necessary permits and licenses required for the performance of the SERVICES and for the continuation of CLIENT and AGEC's activities at the PROJECT SITE.

ARTICLE 4. RIGHT OF ENTRY. CLIENT grants a right of entry to the PROJECT SITE (and to all shops or yards where materials are prepared or stored) to AGEC, its employees, agents, consultants, contractors and subcontractors, for the purpose of performing SERVICES, and all acts, studies, and research in connection therewith, including without limitation the performance of tests and evaluations.

ARTICLE 5. DOCUMENTS. CLIENT shall furnish, or cause to be furnished, all plans, specifications, addenda, change orders, approved shop drawings, reports, data, studies, plans, specifications, documents and other information deemed necessary by AGEC for the proper performance of the SERVICES. AGEC shall be entitled to rely upon documents provided by the CLIENT in performing the SERVICES. All documents provided by CLIENT shall remain the property of CLIENT. All documents prepared by AGEC in connection with the performance of the SERVICES, including but not limited to drawings, specifications, reports, laboratory test data, calculations and estimates, shall remain the exclusive property of AGEC. CLIENT agrees that all documents of any nature furnished to CLIENT or CLIENT's agents or designees, if not paid for by CLIENT, will be returned to AGEC upon demand and will not be used by CLIENT for any purpose whatsoever. CLIENT further agrees that under no circumstances shall any documents produced by AGEC pursuant to this AGREEMENT be used at any location or for any project not expressly provided for in this AGREEMENT without AGEC's prior written permission. If CLIENT has used or uses any portion of AGEC's work without AGEC's consent, CLIENT shall indemnify and save AGEC harmless from any and all claims arising from or relating to, in any way, such unauthorized use. No part of any document AGEC delivers to CLIENT shall be reproduced or distributed, whether for advertising or any other purpose, without AGEC's prior written consent.

ARTICLE 6. RESPONSIBILITIES OF CLIENT. CLIENT shall have the following responsibilities:

a. CLIENT shall designate in writing a person or firm to act as CLIENT's representative with respect to the performance by AGEC of the SERVICES. Such person or firm shall be authorized by CLIENT to transmit instructions, receive information and data, to execute change orders and directives to AGEC, interpret and define CLIENT's policies and decisions with respect to the PROJECT and to order, at CLIENT's expense, such technical services as may be requested by AGEC.

b. CLIENT shall designate in writing those persons or firms who are authorized to receive copies of AGEC's observation and test reports.

c. CLIENT shall notify AGEC sufficiently in advance of any operations so as to allow for assignment of personnel by AGEC for completion of the required services. Such advance notice shall be in accordance with procedures reasonably established by AGEC.

d. CLIENT shall cause the PROJECT contractor, either by the Construction Contract or direct written order to:

i. Secure and deliver to AGEC, without cost to AGEC, preliminary representative samples of those materials which are proposed to be used on the PROJECT and which require testing, together with any relevant data regarding such materials.

ii. Furnish such casual labor and all facilities needed by AGEC to obtain and handle samples at the PROJECT SITE and to facilitate the specified inspection and tests.

iii. Provide and maintain for the use by AGEC of adequate space at the PROJECT SITE for the safe storage and proper curing of test specimens which much remain on the PROJECT SITE prior to testing.

ARTICLE 7. ARCHITECTS, DESIGN ENGINEERS AND CONTRACTORS. AGEC shall not be responsible for the supervision or direction of any architects, design engineers, contractors or their employees or agents, and CLIENT shall so advise the architects, design engineers or contractors. Neither the presence of AGEC's personnel nor any observation or testing by AGEC shall excuse any architects, design engineers or contractor in any way for the acts or omissions by them. AGEC shall not be responsible for job or site safety on the PROJECT or at the PROJECT SITE, and AGEC shall not have the right or obligation to stop the work of any contractor or other person at the PROJECT SITE.

ARTICLE 8. PUBLIC LIABILITY. AGEC maintains workers' compensation and employer's liability insurance for AGEC personnel, as may be required by state law. AGEC also maintains liability and auto liability insurance as required by state law. A Certificate of Insurance evidencing the coverage currently held by AGEC may be supplied upon written request by CLIENT. Notwithstanding any provision of the AGREEMENT to the contrary, AGEC shall not be liable or responsible for any costs, expenses, losses, damages, or liability beyond the amounts, limits, coverage, or conditions of the insurance held by AGEC. In the event any third part brings suit or claim against AGEC for any matter relating to or arising from the SERVICES, the PROJECT or the PROJECT SITE (including, without limitation any suit alleging exposure to or damage from materials, elements or constituents at or from the PROJECT or the PROJECT SITE or which is alleged to have resulted in or caused disease or any adverse health condition to any third party, or resulted in costs for remedial action, uninhabitability of the property, or other property damage), before, during or after the performance of the SERVICES, CLIENT agrees, at its sole cost and expense, to indemnify, defend and hold AGEC and its officers, employees, contractors, and representatives harmless from all costs (including without limitation attorneys fees, witness costs and court costs), expenses, losses and judgements. CLIENT shall have the right to investigate, negotiate and settle, with AGEC's concurrence, any such suit or claim, and AGEC shall cooperate in the defense of any such suit or claim.

ARTICLE 9. PROFESSIONAL LIABILITY. Unless otherwise agreed in writing by CLIENT and AGEC, AGEC's liability to CLIENT or any third part in connection with or arising from any act, omission or error (including negligent or other acts, omissions or errors) for any cause and based upon any legal theory (including without limitation strict liability) shall not exceed, in the aggregate, $50,000 or the total fee received by AGEC pursuant to this AGREEMENT, whichever is greater.

ARTICLE 10. HAZARDOUS SUBSTANCES AND HAZARDOUS CONDITIONS. CLIENT represents and warrants that upon or prior to the execution of the AGREEMENT, it has advised AGEC of any and all (I) substances or constituents deemed hazardous or detrimental to health, safety, or the environment as defined by federal, state or local statues, regulations or ordinances ("HAZARDOUS SUBSTANCES") which are or may be brought upon or near the PROJECT SITE, and (ii) conditions existing in, on or near the PROJECT SITE which pose a potential danger to human health, the environment, or equipment ("HAZARDOUS CONDITIONS"). CLIENT agrees to immediately advise AGEC of the existence of any HAZARDOUS SUBSTANCES or HAZARDOUS CONDITIONS of which it becomes aware during or after the performance of the SERVICES. To the maximum extent permitted by law, CLIENT shall indemnify, defend and hold AGEC harmless from and against any and all claims and liabilities resulting from.

a. the violation by CLIENT or any other party of any federal, state or local statute, regulation or ordinance relating to the disposal or handling of HAZARDOUS SUBSTANCES;

b. the undertaking by CLIENT or any other part of, or the arrangement for, the handling, removal, treatment, storage, transportation or disposal of HAZARDOUS SUBSTANCES;

c. changed conditions, HAZARDOUS SUBSTANCES or HAZARDOUS CONDITIONS introduced at the PROJECT SITE by CLIENT or any other party before, during or after the performance of the SERVICES;

d. any allegation(s) that AGEC is a handler, generator, operator, treater, storer, transporter, or disposer under the Resources Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response Compensation and Liability Act, or any other similar federal, state or local regulation or law;

e. any costs, losses, damages, claims, causes of action or liability which may be asserted against AGEC or which may arise out of any environmental clean up or response, including without limitation all attorneys fees, witness costs and court costs.

f. any claims, causes of action or liability which may be asserted against AGEC or which may arise out of any alleged contamination of an aquifer (including without limitation any such claim which may arise as a result of contamination of certain subsurface areas, as for example when a probe, boring device or well device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and which allegedly results in the spreading of HAZARDOUS SUBSTANCES to any other areas or hydrous bodies).

ARTICLE 11. NO SUPERVISION OR REPORTING DUTIES. AGEC shall not assume control of or responsibility for the PROJECT SITE or the persons operating on the PROJECT SITE, except for the limited purpose of and for such periods necessary to conduct the sampling, testing, or inspection of operations as provided by the AGREEMENT. AGEC shall not be responsible for reporting to any federal, state or local agencies any conditions at the PROJECT SITE that may present potential dangers to public health, safety or the environment. CLIENT shall notify the appropriate federal, state or local agencies, or otherwise disclose, any information that may be necessary to prevent any danger to health, safety or the environment, in accordance with applicable law and in a timely manner. AGEC shall not be authorized to revoke, alter, relax, enlarge or release any requirement of the PROJECT specifications or other contract documents or to approve or accept any portion of the work, unless expressly authorized by CLIENT.

ARTICLE 12. UNFORSEEN OCCURRENCES. If, during the performance of services, any unforseen HAZARDOUS SUBSTANCES or other unforseen conditions or occurrences ("UNFORSEEN CONDITIONS") are encountered which, in AGEC's sole judgement, significantly affect or may affect the SERVICES, the risk involved in providing the SERVICES, or the SCOPE OF SERVICES, CLIENT and AGEC hereby agree to reasonably modify the AGREEMENT, including the SCOPE OF SERVICES, the FEE SCHEDULE, and contractual protections for AGEC. AGEC further agrees to provide an estimate of additional charges relating to the UNFORSEEN CONDITIONS. Any modification of the AGREEMENT shall be in writing and shall be signed by CLIENT and AGEC. If CLIENT and AGEC cannot come to a reasonable agreement with respect to a modification of the AGREEMENT as provided in this ARTICLE 12, AGEC shall have the right to terminate this AGREEMENT with respect to further work on the PROJECT and to receive payment from CLIENT for all SERVICES performed by AGEC prior to the date of such termination. No such termination by AGEC shall release or discharge CLIENT from obligations or duties arising prior to such termination or resulting from conditions existing prior to such termination.

ARTICLE 13. DAMAGE AT PROJECT SITE. AGEC shall not be liable for any property damage or bodily injury arising from or relating to the performance of the SERVICES by AGEC. CLIENT acknowledges and accepts that the performance of the SERVICES, including without limitation the use of test equipment, may unavoidably affect, alter, or damage the buildings, structure and equipment at the PROJECT SITE. CLIENT accepts and agrees to bear all risks inherent with the performance of the SERVICES and shall not hold AGEC liable or responsible for any such effect, alteration or damage.

ARTICLE 14. LITIGATION ASSISTANCE. The SCOPE OF SERVICES does not include costs of AGEC for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CLIENT. All such services required or requested of AGEC except for suits or claims between the parties to the AGREEMENT will be reimbursed as mutually agreed, or if agreement cannot be reached then at rates consistent with the industry and community, and payment for such services shall be in accordance with this AGREEMENT, unless and until otherwise required by a court or arbitrator.

ARTICLE 15. CHANGES. CLIENT may make or approve changes within the SCOPE OF SERVICES.

ARTICLE 16. FORCE MAJEURE. AGEC is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of AGEC.

ARTICLE 16. NO THIRD PARTY BENEFICIARIES. No rights or benefits are provided by the AGREEMENT to any person other than the CLIENT and AGEC and the AGREEMENT has no third-party beneficiaries.

ARTICLE 17. LEGAL ACTION. All legal actions by either party against the other arising from the AGREEMENT, or for the failure to perform in accordance with the applicable standards of care provided in the AGREEMENT, or for any other cause of action, shall be barred 2 years from the date the claimant knew or should have known of its claim; provided, however, no legal actions shall be asserted by CLIENT or AGEC after 4 years from the data of substantial completion of the SERVICES.

ARTICLE 18. BILLING. Unless otherwise expressly provided in the AGREEMENT, billings will be based on actual accrued time, test costs and expenses. CLIENT agrees to pay invoices upon receipt. If payment is not received by AGEC within 30 days of the invoice date, the amount due shall bear interest at a rate of 1.5 percent per month (18 percent per annum) before and after, and CLIENT shall pay all costs of collection, including without limitation reasonable attorneys' fees (provided, however, if interest provided in this ARTICLE 21 exceeds the maximum interest allowable under any applicable law, such interest shall automatically be reduced to the maximum interest allowable by applicable law). If CLIENT has any objection to any invoice or part thereof submitted by AGEC, CLIENT shall so advise AGEC in writing, giving CLIENT's reasons, within 14 days of receipt of such invoice. Payment of the invoice shall constitute final approval of all aspects of the work performed to date as well as the necessity thereof. If the PROJECT or the AGREEMENT is terminated in whole or part prior to the completion of the SERVICES, then AGEC shall be paid for work performed prior to AGEC's receiving or issuing written notice of such termination, and, in addition AGEC shall be reimbursed for any and all expenses associated with the termination of the PROJECT or the AGREEMENT, including without limitation any "shut-down" costs.

ARTICLE 19. SURVIVAL. All obligations arising prior to the termination of the AGREEMENT and all provisions of the AGREEMENT allocating the responsibility or liability between CLIENT and AGEC shall survive the completion of the SERVICES and the termination of the AGREEMENT>

ARTICLE 20. INTEGRATION. The AGREEMENT and all the exhibits and attachments thereto constitute the entire agreement between the parties and cannot be changed except by a written instrument signed by all parties thereto.

ARTICLE 21. GOVERNING LAW. The AGREEMENT shall be governed in all respects by the laws of the State of Utah unless otherwise agreed in writing between the parties.

AGEC
Applied GeoTech

Ivins City Hall (CS)

EXHIBIT A

AGEC Project No. 2201962 — September 30, 2020

Item No.	Item	Unit	Estimated Amount	Unit Rate	Total Cost
1	Soil Testing (building)	hr.	30	$50.00	$1,500.00
2	Concrete Testing ACI Level 1	hr.	36	$50.00	$1,800.00
3	Concrete Cylinders, set of 4	each	25	$52.00	$1,300.00
4	Concrete Reinforcing Steel and Concrete Placement Special Inspection	hr.	75	$75.00	$5,625.00
5	Structural Steel Special Inspection	hr.	20	$80.00	$1,600.00
6	Proctors / Soil Classification	each	4	$250.00	$1,000.00
7	Project Engineer	hr.	16	$195.00	$3,120.00
8	Project Management	hr.	12	$85.00	$1,020.00
9	Grading Report	each	1	$250.00	$250.00
10	Special Inspection Report	each	1	$250.00	$250.00
				Building Total	**$17,465.00**
	Off site and On site Testing				
1	Compaction Testing	hr.	40	$50.00	$2,000.00
2	Concrete Testing (parking lot and misc. placements)	hr.	38	$50.00	$1,900.00
3	Concrete Cylinders, set of 4 (parking lot and misc. placements)	each	12	$52.00	$624.00
4	Compaction testing (off site)	hr.	10	$50.00	$500.00
5	Concrete testing (off site)	hr.	6	$50.00	$300.00
6	Concrete Cylinders (off site)	each	2	$52.00	$104.00
7	Gradations (off site)	each	2	$50.00	$100.00
8	Asphalt field testing	hr.	4	$50.00	$200.00
9	Asphalt Laboratory testing (Rice, Extraction, Gradation)	each	1	$200.00	$200.00
				Parking Total	**$4,524.00**
				Project Total	**$21,989.00**

Notes

1. Estimate does not include epoxy inspections for bolts or anchors.
2. Estimate does not include reinspection's and retests.