

7. Maintenance of applications software packages, whether acquired from The County or any other source unless otherwise specified in the Managed Service Plan selected by The District.
8. Programming (modification of software code) and program (software) maintenance unless otherwise specified in the Managed Service Plan selected by The District.
9. Training services of any kind.
10. Services provided outside of the Normal Working Hours of 8:00 AM – 5:00 PM Central Standard Time, Monday through Friday, excluding County holidays.

Costs associated with the above listed items and services are not included in this Agreement. The County may, upon request of The District and to the extent possible, assist The District in procuring the above listed items and services. Any such assistance will be deemed Additional Services and shall be paid for by The District.

III.

Exclusion of Warranties; and Limitation of Liability: The services under this Agreement are subject to the following:

- A. **SPECIFIC EXCLUSION OF WARRANTIES.** THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT, IF ANY, ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT OR OTHERWISE) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, THE COUNTY DOES NOT WARRANT THAT ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF THE DISTRICT OR THAT THE OPERATION OF PRODUCTS PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS.
- B. **RESTRICTIONS ON WARRANTY.** THE COUNTY HAS NO OBLIGATION TO REPAIR OR REPLACE PRODUCTS DAMAGED BY EXTERNAL CAUSE (INCLUDING THE DISTRICT, THE DISTRICT'S EMPLOYEES, THIRD PARTIES AND ACTS OF GOD) OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN THE COUNTY.
- C. **NO INDIRECT DAMAGES.** WITHOUT LIMITING THE GENERALITY OF SECTIONS OF THIS ARTICLE, IN NO EVENT WILL THE COUNTY BE LIABLE TO THE DISTRICT OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.
- D. **LIMITS ON LIABILITY.** IF, FOR ANY REASON, THE COUNTY BECOMES LIABLE TO THE DISTRICT OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN:
 1. THE AGGREGATE LIABILITY OF THE COUNTY TO THE DISTRICT AND ALL OTHER PARTIES IN CONNECTION WITH THE PRODUCTS AND THE SERVICES WILL BE LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY THE DISTRICT TO THE COUNTY AS CONSIDERATION FOR THE PRODUCTS AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE; AND

2. IN ANY CASE, THE DISTRICT MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST THE COUNTY ARISING OUT OF THIS AGREEMENT OR RELATING TO ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER MORE THAN ONE (1) YEAR AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN.

E. SEPARATE ENFORCEABILITY. SECTIONS OF THIS ARTICLE ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

IV.

General Obligations of The District: Without limiting any of The District's other obligations under this Agreement, The District will:

1. Upgrade to the latest mutually agreed-upon release or version(s) of software that is used by The District as soon as possible after becoming aware of its availability;
2. Ensure that at all times at least one current staff person of The District has been fully trained on the of software that is used by The District; and
3. Designate, by written notice, a primary and backup person as the point of contact for technology issues for each division.
4. Notify the County of any changes in staffing that requires The County's direct communication with regards to billing or network authorization by authorized users.

V.

Term: The initial term is from the date of execution of the Agreement to September 30, 2021. Following the initial term, the Agreement shall automatically renew each October 1st unless terminated pursuant to the terms of this Agreement.

VI.

No Assignment: This agreement may not be assigned.

for each twelve month period
during the term of this Agreement.

VII.

Consideration and Compensation: The County will be compensated based on the costs for the specific project herein. The amount of compensation paid to The County shall be paid at **\$162,404.36** for each twelve month period during the term of this agreement.¹ This amount reflects out-of-pocket reimbursement for all costs such as labor and departmental resources, including equipment and ten percent (10%) overhead, committed to the services rendered herein. **Billing will be made on a monthly, quarterly or annual basis at the request of the District. The parties understand that the costs are *estimated* at this time and subject to final adjustments and billing as authorized by the Williamson County Commissioners Court; however, the parties will act in good faith to limit any changes to increase costs and with regard to abiding by the expense calculations shown in the attached worksheet (Exhibit "A").** Exhibit A is incorporated herein as if copied in full. The County may

¹ Salary may adjust 25% of Grade up to \$177,935.89 as set forth in attached Exhibit "A," which is incorporated herein as if copied in full.

change Exhibit A without further review or authorization by District, although The County shall provide District written notice of any change to Exhibit A at least sixty (60) days prior to the date of that change taking effect.

Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date The District receives the goods under the agreement; (2) the date the performance of the service under the agreement is completed; or (3) the date the District receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by The District in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of The County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

VIII.

No Authority to Bind: Neither Party shall incur any obligations for or in the name of the other Party, or have the authority to bind or obligate the other Party. Neither Party shall make, issue or authorize any statements (whether oral or written) in contravention of the foregoing.

IX.

No Waiver of Sovereign Immunity or Powers: Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of The County, the Williamson County Commissioners Court, or the Williamson County Judge.

X.

Good Faith Clause: The Parties agree to act in good faith in the performance of this agreement.

XI.

Confidentiality: The District expressly agrees that it will not allow any of its employees or representatives unauthorized access to any of The County's confidential information that may be obtained while having access to The County's IT network. The District further agrees that it will not allow any of its employees or representatives to enter any unauthorized areas or access confidential information and will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times.

XII.

Termination: This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving thirty (30) days written notice

thereof. In the event of termination, The District will only be liable for its pro rata share of services rendered and goods actually received.

XIII.

Venue and Applicable Law: Venue of this agreement shall be Williamson County, Texas, and the laws of the State of Texas shall govern all terms and conditions.

XIV.

1.1. **Notices:** The Parties designate the following persons for receipt of notice:

If to Williamson County:

Name: Dan Gattis (or successor)
Title: County Judge
Address: Williamson County
710 Main Street
Georgetown, TX 78626
Phone: (512) 943-1550

If to District:

Name: John Teel (or successor)
Title: Executive Director
Address: Williamson County and Cities Health District
100 West 3rd Street
Georgetown, TX 78626
Phone: (512) 943-3600

The Parties may change the person designated for receipt of notice from time to time by giving notice in writing to the other parties, identifying the new person designated for receipt of service and identifying his/her name, title, address for notice and phone number.

XV.

Severability: In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision in this agreement and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

XVI.

Right to Audit: The District agrees that The County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of The District which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. The District agrees that The

County shall have access during normal working hours to all necessary District facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The County shall give The District reasonable advance written notice of intended audits, which will be at the County's discretion.

XVII.

County Judge or Presiding Officer Authorized to Sign Agreement: The presiding officer of The County's governing body who is authorized to execute this instrument by order duly recorded may execute this agreement on behalf of The County.

AGREED AND APPROVED:

WILLIAMSON COUNTY

By: 

Dan A. Gattis
County Judge

Date: 02-16-2017

HEALTH DISTRICT

By: 

John Teel
Executive Director

Date: 3-2-18