



AGREEMENT FOR COMMISSIONING SERVICES

PROJECT: Expo – West Arena New (“Project”)

COMMISSIONING PROVIDER: Cleary Zimmermann Engineers, LLC. (“CxP”)
Brian Keller, NEBB CP, Principal, Commissioning
1344 S. Flores, Suite 101
San Antonio, TX 78201

COUNTY’S DESIGNATED REPRESENTATIVE: Williamson County Parks Department
Director of Parks
219 Perry Mayfield
Leander, Texas 78641

THIS AGREEMENT FOR COMMISSIONING SERVICES (“Agreement”) is made and entered into effective as of the latest date of the signatories indicated at the conclusion of this document (the “Effective Date”), by and between **Williamson County**, a body corporate and politic under the laws of the State of Texas (“County”) and CxP.

RECITALS

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled “Professional Services Procurement Act” provides for the procurement by counties of services of professional commissioning providers; and

WHEREAS, County intends to have Commissioning provider evaluate the performance, design and operation of the Williamson County Exposition Center West Arena – New, including HVAC, electrical, and plumbing, service water, construction, acceptance and occupancy to satisfy the performance requirements of the project’s documents; and

WHEREAS, County desires that CxP perform certain professional services in connection with the Project; and

WHEREAS, CxP represents that it is qualified and desires to perform such services;

NOW, THEREFORE, County and CxP, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

ARTICLE 1 SCOPE OF AGREEMENT

CxP agrees to perform professional services in connection with the Project as stated herein, and for having rendered such services, County agrees to pay to CxP compensation as stated in the articles to follow.

ARTICLE 2

CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS

2.1 Contract Documents.

Contract Documents consist of this Agreement, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Agreement), and all fully executed Supplemental Agreements which are subsequently issued. These form the entire Agreement, and all are as fully a part of this Agreement as if attached to this Agreement or repeated herein.

2.2 Existing Information.

County shall provide CxP with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular Project at no cost to CxP; however, any and all such information shall remain the property of County and shall be returned, if County so instructs CxP.

2.3 Project Documents.

In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

2.3.1

2012 Edition of the Texas Accessibility Standards (TAS) regarding the Elimination of Architectural Barriers Program, including latest revisions (see 16 Tex. Admin. Code § 68.100; see also Tex. Gov't Code, Ch. 469).

2.3.2

Americans with Disabilities Act (ADA)

2.3.3

Williamson County Facilities Building Code Adoption List, 2020 edition as updated

2.3.4

Williamson County Consultant Design Submittal Guidelines, 2020 edition as updated

ARTICLE 3

NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST PROHIBITED

3.1 Non-collusion.

CxP warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CxP, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or subconsultant any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County reserves and shall have the right to annul this Agreement without liability or, in its discretion and at its sole election, to deduct from the Agreement price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3.2 Debarment Certification.

CxP must sign the Debarment Certification enclosed herewith as **Exhibit E**.

3.3 Financial Interest Prohibited.

CxP covenants and represents that CxP, its officers, employees, agents, consultants, and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials, or equipment that will be recommended or required for the construction of the Project.

ARTICLE 4 CHARACTER AND SCOPE OF SERVICES

4.1

In consideration of the compensation herein provided, CxP shall review professional planning, design and engineering plans for the Project, which are acceptable to County, based on standard planning, landscape architecture, architectural and engineering practices and the scope of work described on the Exhibits attached to this Agreement. CxP shall also serve as County's professional commissioning provider in those phases of the Project to which this Agreement applies and will consult with and give advice to County during the performance of CxP's services.

4.2

CxP shall perform the following Basic Scope of Services (sometimes referred to herein as the "Basic Scope of Services", "Basic Services" or the "Scope of Services"):

4.2.1

The Basic Scope of Services shall generally consist of all elements of work, meetings, materials, and equipment required for the development of the Project in accordance with the requirements, policies, and general practices of Williamson County.

4.2.2

As part of the Basic Services, CxP shall submit its work products to County for review as requested by County.

4.2.3

The detailed Basic Services for the Project is set forth herein as **Exhibit A** to this Agreement, which is expressly incorporated and made a part hereof.

ARTICLE 5 TIME FOR PERFORMANCE

5.1 Commencement.

CxP shall not commence work until CxP has been thoroughly briefed on the scope of the Project and has been notified in writing to proceed, as evidenced by a Notice to Proceed.

5.2 Duration.

CxP agrees to complete the Basic Services within the time period set forth in **Exhibit C**. The time limits set out therein may, for good cause, be extended, in writing, by County as the Project proceeds.

ARTICLE 6 COMPENSATION AND EXPENSES

6.1 Basic Fee.

For and in consideration of the Basic Services rendered by CxP, County shall pay to CxP up to **Eight Thousand Three Hundred Thirty Dollars (\$8,300.)** hereinafter called the "Basic Fee".

The Basic Fee is based upon all estimated labor costs required in the performance of all items and phases of the Basic Services set forth in **Exhibit A**. Compensation for Basic Services will be paid by County by monthly invoices of percentage completion of fees by phase of the Basic Fee as set forth in **Exhibit B**. County will only be obligated to pay CxP for the performance of items and phases of the Basic Services actually rendered and incurred, which may be less than the above stated Basic Fee.

6.2 Expenses.

CxP shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement in accordance with the Williamson County Vendor Reimbursement Policy set forth under **Exhibit D**. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice and **must strictly comply with the Williamson County Vendor Reimbursement Policy**. The copies of the provider's invoice must evidence the actual costs billed to CxP without markup. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and must not exceed **Eight Hundred Thirty Dollars (\$ 830.)**.

ARTICLE 7 ADDITIONAL SERVICES AND CHARGES

For the performance of services not specifically described as Basic Services under **Article 4** above (sometimes referred to herein as "Additional Services"), County shall pay and CxP shall receive, under a negotiated, written Supplemental Agreement, Additional Services compensation based upon invoices of percentage completion.

CxP shall not, however, be compensated for work made necessary by CxP's negligent errors or omissions. In the event of any dispute over the classification of CxP's services as Basic or Additional Services under this Agreement, the decision of County shall be final and binding on CxP.

It is expressly understood and agreed that CxP shall not furnish any Additional Services without the prior written authorization of County by a negotiated Supplemental Agreement. County shall have no obligation to pay for such Additional Services which have been rendered without prior written authorization of County as hereinabove required.

ARTICLE 8 TIME OF PAYMENT; PAYMENT AND INTEREST; AND RIGHT TO AUDIT

8.1 Time of Payment.

During the performance of the services provided for in this Agreement, monthly payments shall be made based upon that portion of the services which has been completed.

On or about the last day of each calendar month during the performance of the Basic Services to be provided under this Agreement, CxP shall submit to County working documents in any stage of completion to demonstrate incremental progress of Basic Services and the compensation which is due for percentage completion of Basic Services.

On or about the last day of each calendar month during the performance of the Additional Services to be provided under **Article 7**, CxP shall submit to County working documents in any stage of completion to demonstrate incremental progress of Additional Services under an applicable Supplemental Agreement related thereto, and the compensation which is due for percentage completion of particular Additional Services.

County shall review the documentation and shall pay each statement as set forth in this **Article 8**, however, the approval or payment of any statement shall not be considered evidence of performance by CxP to the point indicated by such statement or of receipt or acceptance by County of the services covered by such statement. Final payment does not relieve CxP of the responsibility of correcting any errors or omissions resulting from CxP's negligence.

Upon submittal of the initial invoice, CxP shall provide the County Auditor with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

8.2 Prompt Payment Policy.

In accordance with **Chapter 2251, V.T.C.A., Texas Government Code**, payment to CxP will be made within **thirty (30) days** of the day on which the performance of services was complete, or within **thirty (30) days** of the day on which the County Auditor receives a correct invoice for services, whichever is later. CxP may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

8.2.1

There is a bona fide dispute between County and CxP concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or

8.2.2

There is a bona fide dispute between CxP and a subcontractor/ subconsultant or between a subcontractor/ subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Basic Services performed which causes the payment to be late; or

8.2.3

The invoice is not submitted to Williamson County in strict accordance with instructions, if any, on the purchase order, or this Agreement or other such contractual agreement.

The County Auditor shall document to CxP the issues related to disputed invoices within **ten (10) calendar days** of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of **Texas Government Code, Chapter 2251, V.T.C.A.**

ARTICLE 9 PROJECT TEAM

County's Designated Representative for purposes of this Agreement is as follows:

**Williamson County Parks Department
Attn: Director of Parks
219 Perry Mayfield
Leander, Texas 78641**

County shall have the right, from time to time, to change the County's Designated Representative by giving CxP written notice thereof. With respect to any action, decision, or determination which is to be taken or made by County under this Agreement, the County's Designated Representative may take such action or make such decision or determination or shall notify CxP in writing of an individual responsible for, and capable of, taking such action, decision, or determination, and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Agreement, in which case, actions taken by County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision, or determination hereunder by County's Designated Representative shall be binding on County; *provided, however*, County's Designated Representative shall not have any right to modify, amend, or terminate this Agreement or executed Supplemental Agreement. County's Designated Representative shall not have any authority to execute a Supplemental Agreement unless otherwise granted such authority by the Williamson County Commissioners Court.

CxP's Designated Representative for purposes of this Agreement is as follows:

**Cleary Zimmermann Engineers, LLC.
Brian Keller, NEBB CP, Principal, Commissioning
1344 S. Flores, Suite 101
San Antonio, TX 78204**

CxP shall have the right, from time to time, to change CxP's Designated Representative by giving County written notice thereof. With respect to any action, decision, or determination which is to be taken or made by CxP under this Agreement, CxP's Designated Representative may take such action or make such decision or determination, or shall notify County in writing of an individual responsible for and capable of taking such action, decision, or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions, or determinations by CxP's Designated Representative on behalf of CxP shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Agreement, in which case, actions taken by CxP's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision, or determination hereunder by CxP's Designated Representative shall be binding on CxP. CxP's Designated Representative shall have the right to modify, amend, and execute Supplemental Agreements on behalf of CxP.

ARTICLE 10 NOTICE

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or CxP at the following addresses. If mailed, any notice or communication shall be deemed to be received **three (3) days** after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

County: Williamson County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

With copy to: Williamson County Parks Department
Attn: Director of Parks
219 Perry Mayfield
Leander, Texas 78641

and to: Office of General Counsel
Williamson County Commissioners Court
401 W. 6th Street
Georgetown, Texas 78626

CxP: Cleary Zimmermann Engineers, LLC.
1344 S. Flores, Suite 101
San Antonio, TX 78204

Attention: Brian Keller, NEBB CP
Principal, Commissioning

Either party may designate a different address by giving the other party ten (10) days written notice.

ARTICLE 11 PROGRESS EVALUATION

CxP shall, from time to time during the progress of the Basic Services and, when applicable, progress of Additional Services, confer with County at County's election. CxP shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Basic Services and any applicable Additional Services. At the request of County or CxP, conferences shall be provided at CxP's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Basic Services and any applicable Additional Services. County may, from time to time, require CxP to appear and provide information to the Williamson County Commissioners Court.

Should County determine that the progress in Basic Services or any applicable Additional

Services does not satisfy the terms of this Agreement, then County shall review same with CxP to determine corrective action required.

CxP shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Basic Services and any applicable Additional Services, including but not limited to the following:

11.1

Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of this Agreement or preclude the attainment of Project Basic Services and any applicable Additional Services by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and

11.2

Favorable developments or events which enable meeting goals sooner than anticipated in relation to this Agreement or any applicable Supplemental Agreement.

ARTICLE 12 CHANGES IN COMPLETED BASIC SERVICES

If County deems it necessary to request changes to previously satisfactorily completed Basic Services or parts thereof which involve changes to the original Basic Services or character of Basic Services under this Agreement, then CxP shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Services and paid for as specified under **Article 7** and **Article 8**. CxP shall make revisions to Basic Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Basic Services.

ARTICLE 13 REVIEW PROCESS AND REVISIONS TO CxP WORK PRODUCT

13.1 Review Process.

CxP's Work Product will be reviewed by County under its applicable technical requirements and procedures, as follows:

13.1.1 Submittal.

Reports, plans, surveys, field notes, original drawings, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, data, sketches and/or schematics prepared by CxP and supporting documents (collectively referred to hereinabove and hereinafter as the "CxP Work Product(s)"), shall be submitted by CxP on or before the dates specified for completion, as set out in the Production Schedule set forth in **Exhibit C**.

13.1.2 Completion.

Reports, plans, specifications, and supporting documents shall be submitted by CxP on or before the dates specified in **Exhibit C**. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required

items, as set out in **Exhibit A**, have been included in compliance with the requirements of this Agreement. The completeness of any Basic Services submitted to County shall be determined by County within thirty (30) days of such submittal and County shall notify CxP in writing within such thirty (30) day period if such Basic Services have been found to be incomplete. If the submission is Complete, County will notify CxP and County's technical review process will begin.

If the submission is not Complete, County will notify CxP, who shall perform such professional services as are required to complete the Basic Services and resubmit it to County. This process shall be repeated until a submission is Complete.

13.1.3 Acceptance.

County will review the completed Basic Services in each design phase for compliance with this Agreement and general conformance with the Design Deliverable Guidelines. "Acceptance" or "Accepted" shall mean that in County's reasonable opinion, substantial compliance with the requirements of this Agreement has been achieved.

If a lack of coordination between subconsultant documents is discovered in the CxP work product, which is not specifically called-out by CxP as a pending coordination item, the work product will be returned to CxP along with written email notification which may describe preliminary deficiencies discovered and may reference the terms of **Paragraph 13.1.3** of this Agreement. CxP shall perform any required corrections to Basic Services and resubmit to County.

Should this process need to be repeated for the same or subsequent deficiencies related to the initial deficiencies, County will issue a marked-up work product to CxP indicating specific deficiencies for correction. County will also issue a notice for CxP to deduct **One Thousand Dollars (\$ 1,000)** from the CxP 's Basic Fee on the next invoice for each occurrence until the Basic Services are Accepted.

13.1.4 Final Approval.

After Acceptance, CxP shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by County. "Final Approval" in this sense shall mean formal recognition that the Basic Services have been fully carried out.

13.2 Revision to CxP Work Product.

CxP shall make, without expense to County, such revisions to CxP Work Product as may be required to correct negligent errors or omissions so CxP Work Product meets the needs of County, but after the approval of CxP Work Product any revisions, additions, or other modifications made at County's request which involve extra services and expenses to CxP shall entitle CxP to additional compensation for such extra services and expenses; provided, however, CxP hereby agrees to perform any necessary corrections to CxP Work Products which are found to be in negligent error or omission as a result of CxP's development of CxP Work Product, at any time, without additional compensation. If it is necessary, due to such error or omission by CxP, to revise any CxP Work Product in order to make the Project constructible, CxP shall do so without additional compensation. In the event of any dispute over the classification of CxP's Work Products as Complete, Accepted, or Approved under this Agreement, the decision of County shall be final and binding on CxP, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

13.3 Days.

All references to a “day” in this Agreement shall mean a calendar day unless otherwise specified.

13.4 County’s Reliance on CxP.

CxP’s duties as set forth herein shall at no time be in any way diminished by reason of any review, evaluation, or approval by County nor shall CxP be released from any liability by reason of such review, evaluation or approval by County, it being understood that County, at all times, is ultimately relying upon CxP’s skill, ability, and knowledge in performing the Basic Services required hereunder.

ARTICLE 14 SUSPENSION

Should County desire to suspend the Basic Services, but not to terminate this Agreement, then such suspension may be effected by County giving CxP **thirty (30) calendar days’** verbal notification followed by written confirmation to that effect. Such **thirty (30)-day** notice may be waived in writing by agreement and signature of both parties. The Basic Services may be reinstated and resumed in full force and effect within **sixty (60) days** of receipt of written notice from County to resume the Basic Services. Such **sixty (60)-day** notice may be waived in writing by agreement and signature of both parties. If this Agreement is suspended for more than **thirty (30) days**, CxP shall have the option of terminating this Agreement and, in the event, CxP shall be compensated for all Basic Services performed and reimbursable expenses incurred, provided such Basic Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

County assumes no liability for Basic Services performed or costs incurred prior to the date authorized by County for CxP to begin Basic Services, and/or during periods when Basic Services are suspended, and/or subsequent to the completion date.

ARTICLE 15 VIOLATION OF CONTRACT TERMS/ BREACH OF CONTRACT

Violation of contract terms or breach of contract by CxP shall be grounds for termination of this Agreement, and any increased costs arising from CxP’s default, breach of contract, or violation of contract terms shall be paid by CxP.

ARTICLE 16 TERMINATION

This Agreement may be terminated as set forth below.

16.1

By mutual agreement and consent, in writing, of both parties.

16.2

By County, by notice in writing to CxP, as a consequence of failure by CxP to perform the Basic Services set forth herein in a satisfactory manner.

16.3

By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

16.4

By County, for reasons of its own and not subject to the mutual consent of CxP, upon not less than **thirty (30) days** written notice to CxP.

16.5

By satisfactory completion of all Basic Services and obligations described herein.

Should County terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to CxP. In determining the value of the Basic Services performed by CxP prior to termination, County shall be the sole judge. Compensation for Basic Services at termination will be based on a percentage of the Basic Services completed at that time. Should County terminate this Agreement under **Section 16.4** above, then the amount charged during the **thirty (30)-day** notice period shall not exceed the amount charged during the preceding **thirty (30) days**.

If CxP defaults in the performance of this Agreement or if County terminates this Agreement for fault on the part of CxP, then County shall give consideration to the actual costs incurred by CxP in performing the Basic Services to the date of default, the amount of Basic Services required which was satisfactorily completed to date of default, the value of the Basic Services which are usable to County, the cost to County of employing another firm to complete the Basic Services required and the time required to do so, and other factors which affect the value to County of the Basic Services performed at the time of default.

The termination of this Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Agreement. If the termination of this Agreement is due to the failure of CxP to fulfill its contractual obligations, then County may take over the Project and prosecute the Basic Services to completion. In such case, CxP shall be liable to County for any additional and reasonable costs incurred by County.

CxP shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by CxP in support of the Basic Services under this Agreement.

ARTICLE 17 USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications, and data or programs stored electronically, (hereinafter referred to as "CxP Work Products") prepared by CxP and its subcontractors/ subconsultants are related exclusively to the services described in this Agreement and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of CxP's designs under this Agreement (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to CxP.

By execution of this Agreement and in confirmation of the fee for services to be paid under this Agreement, CxP hereby conveys, transfers, and assigns to County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and Work Product developed under this Agreement. Copies may be retained by CxP. CxP shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by CxP or anyone connected with CxP, including agents, employees, Engineers or subcontractors/ subconsultants. All documents so lost or damaged shall be replaced or restored by CxP without cost to County.

Upon execution of this Agreement, CxP grants to County permission to reproduce CxP's work and documents for purposes of constructing, using, and maintaining the Project, provided that County will comply with its obligations, including prompt payment of all sums when due, under this Agreement. CxP shall obtain similar permission from CxP's subcontractors/ subconsultants consistent with this Agreement. If and upon the date CxP is adjudged in default of this Agreement, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the work and documents for the purposes of completing, using, and maintaining the Project.

County shall not assign, delegate, sublicense, pledge, or otherwise transfer any permission granted herein to another party without the prior written consent of CxP. However, County shall be permitted to authorize the contractor, subcontractors, and material or equipment suppliers to reproduce applicable portions of CxP Work Products appropriate to and for use in the execution of the Work. Submission or distribution of CxP Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of CxP Work Products shall be at County's sole risk and without liability to CxP and its subconsultants.

Prior to CxP providing to County any CxP Work Products in electronic form or County providing to CxP any electronic data for incorporation into CxP Work Products, County and CxP shall, by separate written agreement, set forth the specific conditions governing the format of such CxP Work Products or electronic data, including any special limitations not otherwise provided in this Agreement. Any electronic files are provided by CxP for the convenience of County and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by CxP, the electronic copy shall prevail. Only printed copies of documents conveyed by CxP shall be relied upon.

CxP shall have no liability for changes made to the drawings by other consultants subsequent to the completion of the Project.

ARTICLE 18

PERSONNEL, EQUIPMENT, AND MATERIAL

CxP shall furnish and maintain, at its own expense, quarters for the performance of all Basic Services, and adequate and sufficient personnel and equipment to perform the Basic Services as required. All employees of CxP shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of CxP who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Basic Services shall immediately be removed from association with the Project when so instructed by County. CxP certifies that it presently has adequate qualified personnel in its employment for performance of

the Basic Services required under this Agreement, or will obtain such personnel from sources other than County. CxP may not change the Project Manager without prior written consent of County.

ARTICLE 19 SUBCONTRACTING

CxP shall not assign, subcontract, or transfer any portion of the Basic Services under this Agreement without prior written approval from County. All subcontracts shall include the provisions required in this Agreement. No subcontract shall relieve CxP of any responsibilities under this Agreement.

ARTICLE 20 MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the right herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

ARTICLE 21 COMPLIANCE WITH LAWS

21.1 Compliance.

CxP shall render the services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the planning, landscape architecture, architecture and engineering professions, and in recognition of such standards, CxP shall comply with all applicable federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, minimum/ maximum salary and wage statutes and regulations, and licensing laws and regulations. CxP shall furnish County with satisfactory proof of its compliance.

CxP shall further obtain all permits and licenses required in the performance of the Basic Services contracted for herein.

21.2 Taxes.

CxP shall pay all taxes, if any, required by law arising by virtue of the Basic Services performed hereunder. County is qualified for exemption pursuant to the provisions of **Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act**.

ARTICLE 22 INDEMNIFICATION

CXP AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS,

LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY CxP, CxP'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH CxP INCLUDING, WITHOUT LIMITATION, CxP'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH CxP EXERCISES CONTROL.

CxP FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM CxP'S FAILURE TO PAY CxP'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS AGREEMENT BY CxP.

CxP FURTHER AGREES TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY CxP IN THE PERFORMANCE OF THIS AGREEMENT.

THE LIMITS OF INSURANCE REQUIRED IN THIS AGREEMENT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT CxP'S OBLIGATIONS UNDER THIS **ARTICLE 22**. THE TERMS AND CONDITIONS CONTAINED IN THIS **ARTICLE 22** SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF COUNTY OR THIRD PARTIES FOR WHOM CxP IS NOT LEGALLY LIABLE, CxP'S OBLIGATIONS SHALL BE IN PROPORTION TO CxP'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST COUNTY IN WHICH CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY ACTS, ERRORS OR OMISSIONS OF CxP OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY CxP, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS IN THE CONSTRUCTION DOCUMENTS OR IN THE ADMINISTRATION OF THIS AGREEMENT BY CxP OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY CxP, AND/OR INADEQUATE SERVICES PURSUANT TO THE CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT AS DEFINED AND REQUIRED BY THIS AGREEMENT, AGREEMENT EXHIBITS AND THE CONSTRUCTION CONTRACT DOCUMENTS, THEN COUNTY SHALL HAVE THE RIGHT TO JOIN CxP AT COUNTY'S COST. CxP SHALL ALSO HOLD COUNTY HARMLESS AND INDEMNIFY COUNTY TO THE EXTENT THAT CxP, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH CxP EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE CxP, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH CxP EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

ARTICLE 23 PROFESSIONAL'S RESPONSIBILITIES

CxP shall be responsible for the accuracy of its Professional Services and shall promptly make necessary revisions or corrections to its Work Product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine CxP's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of **Article 31**. CxP shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

ARTICLE 24 NOT USED

ARTICLE 25 INSURANCE

CxP must comply with the following insurance requirements at all times during this Agreement:

25.1 Coverage Limits.

CxP, at CxP's sole cost, shall purchase and maintain during the entire term while this Agreement is in effect the following insurance:

25.1.1

Worker's Compensation in accordance with statutory requirements.

25.1.2

Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

25.1.3

Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage of \$1,000,000.00 each accident.

25.1.4

Professional Liability Insurance in the amount of \$2,000,000.00 per claim and annual aggregate.

25.2 Additional Insureds; Waiver of Subrogation.

"Williamson County, its directors, officers and employees" shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where "Williamson County, its directors, officers and employees" are additional insureds, such insurance shall be primary; and, any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.

25.3 Premiums and Deductible.

CxP shall be responsible for payment of premiums for all insurance coverages required under this **Article 25**. CxP further agrees that for each claim, suit, or action made against insurance provided hereunder, with respect to all matters for which CxP is responsible hereunder, CxP shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over **\$50,000** in CxP's insurance must be declared and approved in writing by County in advance.

25.4 Commencement of Work.

CxP shall not commence any work under this Agreement until it has obtained all required insurance and such insurance has been approved by County. As further set out below, CxP shall not allow any subcontractor/ subconsultant(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved; and, such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of CxP hereunder.

25.5 Insurance Company Rating.

Required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A-rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

25.6 Certification of Coverage.

Prior to the performance of any services, CxP shall furnish County with a Certificate of Insurance issued by the insurer evidencing the required coverages and terms under this article. The initial Certificate of Insurance is evidenced as **Exhibit F** herein entitled "Certificates of Insurance." As further set out below, CxP shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of CxP hereunder.

25.7 Certificate Holder.

The name of the Certificate Holder in the Certificate of Insurance issued by the insurer shall be as follows:

Williamson County, Texas
C/O: Williamson County Risk Management
301 SE Inner Loop
Georgetown, TX. 78626
Email: coi.submission@wilco.org

25.8 No Arbitration.

It is the intention of County and agreed to and hereby acknowledged by CxP, that no provision of this Agreement shall be construed to require County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Agreement.

25.9 Subcontractor/ Subconsultant's Insurance.

Without limiting any of the other obligations or liabilities of CxP, CxP shall require each subcontractor/ subconsultant performing work under this Agreement (to the extent a subcontractor/ subconsultant is allowed by County) to maintain during the term of this Agreement, at the subcontractor/ subconsultant's own expense, the same stipulated minimum insurance required in this **Article 25** above, including the required provisions and additional policy conditions as shown below in this **Article 25**.

CxP shall obtain and monitor the certificates of insurance from each subcontractor/ subconsultant in order to assure compliance with the insurance requirements. CxP must retain the certificates of insurance for the duration of this Agreement and shall have the responsibility of enforcing these insurance requirements among its subcontractor/ subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

25.10 Insurance Policy Endorsements.

Each insurance policy shall include the following conditions by endorsement to the policy:

25.10.1

County shall be notified **ten (10) days** prior to the expiration, cancellation, nonrenewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

Williamson County, Texas
C/O: Williamson County Risk Management
301 SE Inner Loop
Georgetown, TX. 78626
Email: coi.submission@wilco.org

25.10.2

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

25.11 Notices by CxP.

CxP shall not cause any insurance to be canceled nor permit any insurance to lapse. In addition to any other notification requirements set forth hereunder, CxP shall also notify County, within twenty-four (24) hours of receipt of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.

25.12 Cost of Insurance.

The cost of all insurance required herein to be secured and maintained by CxP shall be borne solely by CxP, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such certificates of insurance are evidenced as **Exhibit F**.

ARTICLE 26 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. CxP may not assign, sublet, or transfer

any interest in this Agreement, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

ARTICLE 27 SEVERABILITY

In the event 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, then such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 28 PRIOR AGREEMENTS SUPERSEDED

This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter defined herein. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

ARTICLE 29 CxP'S ACCOUNTING RECORDS

CxP agrees to maintain, for a period of **three (3) years** after final payment under this Agreement, detailed records, books, documents, and papers which are directly pertinent to the services to be performed under this Agreement and records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for the purposes of making audits, examinations, excerpts and transcriptions. CxP agrees that 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 detailed records, books, documents, and papers which are directly pertinent to the services to be performed under this Agreement and records of reimbursable costs and expenses of other providers for the purposes of making audits, examinations, excerpts, and transcriptions. CxP further agrees that County shall have access during normal working hours to all necessary CxP facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this **Article 29**. County shall give CxP reasonable advance notice of intended audits.

ARTICLE 30 GENERAL PROVISIONS

30.1 Time is of the Essence.

CxP understands and agrees that time is of the essence and that any failure of CxP to complete the Basic Services within the agreed Production Schedule set out in **Exhibit C** may constitute a material breach of this Agreement. CxP shall be fully responsible for its delays or for failures to use its reasonable efforts in accordance with the terms of this Agreement and CxP's standard of performance as defined herein. Where damage is caused to County due to CxP's negligent failure

to perform, County may accordingly withhold, to the extent of such damage, CxP's payments hereunder without waiver of any of County's additional legal rights or remedies.

30.2 Force Majeure.

Neither County nor CxP shall be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

30.3 Enforcement and Venue.

This Agreement shall be enforceable in Georgetown, Williamson County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

30.4 Standard of Performance.

The standard of care for all professional services performed or furnished by CxP and its employees under this Agreement will be the care and skill ordinarily used by members of CxP's profession, practicing under the same or similar circumstances at the same time and in the same locality.

30.5 Opinion of Probable Cost.

Any reviews of opinions of probable Project cost or probable construction cost provided by CxP are made on the basis of information available to CxP and on the basis of CxP's experience and qualifications and represents its judgment as an experienced and qualified professional. However, since CxP has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, CxP does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost CxP prepares.

30.6 Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

30.7 Reports of Accidents.

Within **twenty-four (24) hours** after CxP becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of CxP), whether or not it results from, or involves, any action or failure to act by CxP or any employee or agent of CxP and which arises in any manner from the performance of this Agreement, CxP shall send a written report of such accident or other event to County, setting forth a full and concise statement of the facts pertaining thereto. CxP shall also immediately send to County a copy of any summons, subpoena, notice, or other documents served upon CxP, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from CxP's performance of work under this Agreement.

30.8 Gender, Number, and Headings.

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

30.9 Construction.

Each party hereto acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

30.10 Independent Contractor Relationship.

Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

30.11 No Waiver of Immunities.

Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter, to any extent whatsoever, the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

30.12 Texas Public Information Act.

To the extent, if any, that any provision in this Agreement is in conflict with **Texas Government Code 552.001** et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

30.13 Governing Terms and Conditions.

If there is an irreconcilable conflict between the terms and conditions set forth in this Agreement or any Supplemental Agreement and the terms and conditions set forth in any Exhibit, Appendix to this Agreement, the terms and conditions set forth in this Agreement or any Supplemental Agreement shall control over the terms and conditions set forth in any Exhibit, Appendix to this Agreement.

30.14 Appropriation of Funds by County.

County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. CxP understands and agrees that County's payment of amounts under this Agreement is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement. It is further understood and

agreed by CxP that County shall have the right to terminate this Agreement at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may affect such termination by giving written notice of termination to CxP.

ARTICLE 31 DISPUTE RESOLUTION

Except as otherwise specifically set forth herein, County and CxP shall work together in good faith to resolve any controversy, dispute, or claim between them which arises out of or relates to this Agreement, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within **thirty (30) days** following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Agreement, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Agreement shall be conducted in Williamson County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation, if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of this Agreement.

ARTICLE 32 EQUAL OPPORTUNITY IN EMPLOYMENT

The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

ARTICLE 33 MERGER

The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

ARTICLE 34 PUBLIC CONTACT

Contact with the news media, citizens of Williamson County or governmental agencies shall be the responsibility of County. Under no circumstances shall CxP release any material or information developed in the performance of its services hereunder without the express written permission of County.

ARTICLE 35 CxP's REPRESENTATIONS

CxP represents that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the services and perform its obligation under this Agreement and under the Contract Documents. CxP further represents and acknowledges that: (a) it is a sophisticated business entity that possesses the required level of experience and expertise in business administration, construction, and contract administration of projects of similar or like size, complexity, and nature as the Project and (b) the fee stated in this Agreement is adequate compensation for the timely completion of the Basic Services.

ARTICLE 36 CONFIDENTIALITY

CxP hereby acknowledges the services to be performed hereunder pertain to a secured correctional facility (Williamson County Jail) and that CxP must ensure that information relating all areas of the Williamson County Jail must not be disclosed to third parties. CxP expressly agrees that its employees, agents, or any other person or entity under contract with CxP including, without limitation, CxP's subconsultants, or any other entity over which CxP exercises control will not use any information relating to the Williamson County Jail that may be obtained while providing services hereunder for any purpose other than for what is necessary to perform the required services. CxP agrees to use the same degree of care as it uses to protect the confidentiality of its own confidential information, but no less than reasonable precautions to maintain confidentiality with respect to the Williamson County Jail, and to prevent disclosure thereof to persons other than its employees, agents, any other person or entity under contract with CxP including, without limitation, CxP's subconsultants, or any other entity over which CxP exercises control who need access to information regarding the Williamson County Jail to carry out their obligations under this Agreement. CxP agrees that CxP and its employees, agents, any other person or entity under contract with CxP including, without limitation, CxP's subconsultants, or any other entity over which CxP exercises control will not enter any unauthorized areas of the Williamson County Jail and will not disclose any information to unauthorized third parties and will take care to guard the security of the information at all times. CxP agrees that all of its employees, agents, any other person or entity under contract with CxP including, without limitation, CxP's subconsultants, or any other entity over which CxP exercises control shall be subject to background checks and that the Williamson County Sheriff or his agent will perform checks. County shall retain the right to deny right of entry to the Williamson County Jail to anyone.

ARTICLE 37 SIGNATORY WARRANTY

The undersigned signatory for CxP hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Agreement and that he/she has full and complete authority to enter into this Agreement on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Agreement.

IN WITNESS WHEREOF, County has caused this Agreement to be signed in its name by its duly authorized County Judge, or presiding officer of the Williamson County Commissioners Court in the absence of the County Judge, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

CxP:

Cleary Zimmermann Engineers, LLC.

By: Brian Keller

Signature

Brian Keller

Printed Name

Principal

Title

Date Signed: 6/18/2025

COUNTY:

Williamson County, Texas

By: _____

Signature

Printed Name

Title

Date Signed: _____

EXHIBIT A

SCOPE OF BASIC SERVICES

THE FOLLOWING SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE AGREEMENT. TO THE EXTENT THIS SCOPE OF SERVICES IS INCONSISTENT WITH THE AGREEMENT, THE AGREEMENT WILL SUPERSEDE THE SCOPE OF SERVICES AND WILL BE CONTROLLING.

In consideration of the Basic Fee provided in the Agreement, CxP shall perform the following Basic Services, based on standard commissioning practices:

These services may include, but are not limited to developing commissioning plans, reviewing design documents, inspecting and testing systems, verifying performance, training staff, and documenting results as agreed to by County and CxP.

GENERAL REQUIREMENTS

Design Criteria. CxP shall prepare all work in accordance with the latest version of applicable County's procedures, specifications, manuals, guidelines, standard drawings, and standard specifications.

Right-of-Entry and Coordination. CxP shall notify County and secure permission to enter private property to perform any surveying, environmental, engineering or geotechnical activities needed off County property. In pursuance of County's policy with the general public, CxP shall not commit acts which would result in damages to private property, and CxP shall make every effort to comply with the wishes and address the concerns of affected private property owners. CxP shall contact each property owner prior to any entry onto the owner's property and shall request concurrence from County prior to each entry.

CxP shall notify County and coordinate on all controls at project interfaces.

CxP shall review each exhibit necessary for approval by each utility, and other governmental or regulatory agency in compliance with the applicable format and guidelines required by each entity and as approved by County. CxP shall notify County in writing prior to beginning any services on any outside agency's exhibit.

Progress Reporting. CxP shall submit monthly (at a minimum) a progress status e-mail to County Architect Office (CxA) regardless of whether CxP is invoicing for that month.

CxP shall review the design and estimated construction schedule and provide findings in a format reasonably acceptable to County during project phases prior to the Construction Administration Phase. CxP shall schedule milestone submittals per **Exhibit C – Production Schedule**. Contractor shall prepare and maintain a construction schedule in Gantt chart format during the project Construction Administration Phase through the Close-out Phase.

Within **thirty (30) days** of completion of construction of the project, CxP shall review all electronic

closeout files provided by Contractor and A/E in formats reasonably acceptable to County. Within **three hundred (300) days** of completion of construction of the project, CxP shall provide a list of problems or concerns, suggested improvements, and ongoing commissioning plan in formats reasonably acceptable to County.

Final payment is contingent upon County's receipt and confirmation by CxA that the electronic files function and are formatted in accordance with the Agreement and all review comments are addressed.

CxP shall prepare a letter of transmittal to accompany each document submittal to County. At a minimum, the letter of transmittal must include County's project name, Agreement and Work Authorization numbers, as well as facility name and address.

Coordination. CxP shall coordinate issues through County's AO. County will communicate, in writing, resolution of issues and provide CxP direction through County's AO.

Level of Effort. CxP shall base the level of effort at each phase on the prior work developed in earlier phases without unnecessary repetition or re-study.

Quality Assurance (QA) and Quality Control (QC). CxP shall provide peer review at all levels. For each deliverable, CxP shall maintain evidence of CxP's internal review and mark-up of that deliverable as preparation for submittal. When internal mark-ups are requested by County in advance, County, at its sole discretion, may reject the deliverable should CxP fail to provide the evidence of internal mark-ups. CxP shall clearly label each document submitted for quality assurance as an internal mark-up document.

CxP shall perform QA and QC on all consultant products (when applicable to the project) prior to delivery to County. If, during the course of reviewing a submittal, it becomes apparent to County that the submittal contains unreasonable errors, omissions, or inconsistencies, County may cease its review and immediately return the submittal for appropriate action by CxP.

A submittal returned to CxP for this reason is not a submittal for purposes of the submission schedule. Rejected submittals shall neither impact the overall deadline of the Project nor the review period allotted to County officials. CxP shall provide an updated schedule showing interim submission date changes to make-up for any lost time. CxP shall not submit an invoice until County accepts the submittal as reasonably complete.

Naming of Electronic Project Files and Organization of Design Project Folders. CxP shall use succinct and understandable file names including project name, document content, and date created (i.e. "*Project_DOCUMENT_yyyy.mm.dd*"). CxP shall maintain files in an organized folder structure that is readily understandable to outside users to facilitate communication and minimize complications in project close-out.

Referenced Documents. County standardized design and procedure documents are provided for public reference at the following web address:

<https://www.wilcotx.gov/376/Facilities-Management>

SCOPE OF WORK:

Williamson County Exposition Center – West Arena New
5150 Bill Pickett Trail, Taylor, TX 76574
Parks Department
P#635

The scope of work includes the following systems that will be commissioned:

- HVAC
 - equipment, ductwork, and piping
 - DDC Controls
- Electrical
 - Interior lighting and control system
 - Exterior lighting and control system
- Plumbing, Service Water
 - Hot water generation

Design services shall be conducted in phases as outlined herein. Phases may be combined to expedite design process when defined in **Exhibit C – Production Schedule**. Individual phases or groups of phases shall be authorized herein or by fully executed Supplemental Agreement.

Phase III - CONSTRUCTION PHASE COMMISSIONING

Upon County acceptance of previous phase, CxP shall proceed with the following:

- A. Review submittals with County, including site observations and witnessing installation of critical systems.
- B. Develop checklists for equipment and functional testing requirements based on approved submittals.
- C. Review RFI and change order logs and submittals. Report deficiencies to County.
- D. Consult freely with County concerning the principal phases of the work and immediately advise County of any unusual requirements or features not apparent during execution of the design phases.
- E. Verify pre-functional checklists are completed to identify potential issues or discrepancies.
- F. Provide deliverables in accordance with County's Commissioning Guide.

EXHIBIT B
FEE SCHEDULE

This schedule indicates fees by Phase of the Basic Fee:

\$ 8,330

100%

-	Cleary Zimmermann Engineers, LLC	\$	-
0%	N/A	\$	-

Phase III - CONSTRUCTION PHASE COMMISSIONING

\$ 8,330

100%

Cleary Zimmermann Engineers, LLC	\$	8,330
N/A	\$	-

EXHIBIT C

PRODUCTION SCHEDULE

A/E agrees to complete the professional design services called for in **Exhibit A** of this Agreement within Forty-Three **(43) calendar days** from the date of this Agreement.

The above time limits may, for good cause, be extended, in writing, by County as the Project proceeds.

The schedule below indicates various project milestones and target dates.
Standard end-of-phase review periods for County shall be seven (7) calendar days.

Agreement Execution Date

07/01/25

Phase III - CONSTRUCTION PHASE COMMISSIONING

Start of submittal reviews	07/08/25
Verify pre-functional checklists are completed	08/07/25
County written authorization to proceed to next phase	08/14/25

EXHIBIT D

Williamson County

Vendor Reimbursement Policy

The purpose of this Williamson County Vendor Reimbursement Policy (“Policy”) is to provide clear guidelines to vendors on Williamson County’s expectations and requirements regarding allowable reimbursable expenditures and required backup. The Policy will also minimize conflicts related to invoice payments and define non-reimbursable items. This Policy is considered a guideline and is not a contract.

This Policy may be altered, deleted or amended, at any time and without prior notice to vendors, by action of the Williamson County Commissioners Court. Unenforceable provisions of this Policy, as imposed by applicable law, regulations, or judicial decisions, shall be deemed to be deleted. Any revisions to this Policy will be distributed to all current vendors doing business with the County.

1. Invoices and Affidavits

- 1.1 Invoices must adequately describe the goods or services provided to County and include all required backup (i.e. reimbursable expenses, mileage log, timesheets, receipts detailing expenses incurred etc.) that is in a form acceptable to the Williamson County Auditor. Invoices that do not adequately describe the goods or services provided to County or contain backup that is satisfactory to the Williamson County Auditor will be returned to vendor for revisions and the provision above relating to invoice errors resolved in favor of the County shall control as to the required actions of vendor and when such invoice must be paid by the County.
- 1.2 In the event an invoice includes charges based upon hourly billing rates for services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to the County or whether they are the basis of invoices from subcontractors for which the vendor seeks reimbursement from the County, the charges shall be accompanied by an affidavit signed by an officer or principal of the vendor certifying that the work was performed, it was authorized by the County and that all information contained in the invoice that is being submitted is true and correct.
- 1.3 Upon County’s request, vendor must submit all bills paid affidavits wherein vendor must swear and affirm that vendor has paid each of its subcontractors, laborers, suppliers and material in full for all labor and materials provided to vendor for or in connection with services and work performed for County and, further, vendor must swear and affirm that vendor is not aware of any unpaid bills, claims, demands, or causes of action by any of its subcontractors, laborers, suppliers, or material for or in connection with the furnishing of labor or materials, or both, for services and work performed for County.

2. Travel Reimbursement

- 2.1 The County will only cover costs associated with travel for vendors outside a 45-mile radius from the Williamson County Courthouse, 710 Main Street, Georgetown, Texas 78626.
- 2.2 The County will only cover costs associated with travel as documented work for County. If a vendor is also doing business for another client, the travel costs must be split in proportion to the amount of work actually performed for the County and the other client. The only allowable travel expense will be for the specific days worked for Williamson County.
- 2.3 No advance payments will be made to vendor for travel expenditures. The travel expenditure may only be reimbursed after the expenditure/trip has already occurred and vendor has provided the Williamson County Auditor with all necessary and required backup.

- 2.4 Vendors must submit all travel reimbursement requests on each employee in full. Specifically, a travel reimbursement request must include all related travel reimbursement expenses relating to a particular trip for which vendor seeks reimbursement. Partial travel reimbursement requests will not be accepted (i.e. vendor should not submit hotel and mileage one month then the next month submit rental car and airfare). If the travel reimbursement appears incomplete, the invoice will be sent back to the vendor to be submitted when all information is ready to submit in full.
- 2.5 Reimbursement for transportation costs will be at the most reasonable means of transportation (i.e.: airline costs will be reimbursed for coach rate, rental car costs will only be reimbursed if rental car travel was most reasonable means of travel as compared to travel by air).
- 2.6 The County will not be responsible for, nor will the County reimburse additional charges due to personal preference or personal convenience of individual traveling.
- 2.7 The County will not reimburse airfare costs if airfare costs were higher than costs of mileage reimbursement.
- 2.8 Additional expenses associated with travel that is extended to save costs (i.e. Saturday night stay) may be reimbursed if costs of airfare would be less than the cost of additional expenses (lodging, meals, car rental, mileage) if the trip had not been extended. Documentation satisfactory to the Williamson County Auditor will be required to justify expenditure.
- 2.9 County will only reimburse travel expense to necessary personnel of the vendor (i.e. no spouse, friends or family members).
- 2.10 Except as otherwise set forth herein, a vendor must provide a paid receipt for all expenses. If a receipt cannot be obtained, a written sworn statement of the expense from the vendor may be substituted for the receipt.
- 2.11 Sales tax for meals and hotel stays are the only sales taxes that will be reimbursed. Sales tax on goods purchased will not be reimbursed. A sales tax exemption form is available from the Williamson County Auditor's Office upon request.
- 2.12 The County will not pay for any late charges on reimbursable items. It is the responsibility of the vendor to pay the invoice first and seek reimbursement from the County.

3. Meals

- 3.1 Meal reimbursements are limited to a maximum of \$59.00 per day on overnight travel. On day travel (travel that does not require an overnight stay), meal reimbursements are limited to a maximum of \$25.00 per day. The travel must be outside the Williamson County Courthouse, 710 Main Street, Georgetown, Texas 78626 by a 45-mile radius.
- 3.2 Receipts are required on meal reimbursement amounts up to the maximum per day amount stated for overnight or day travel. If receipts are not presented, the vendor can request per diem (per diem limits refer to 3.2). However, a vendor cannot combine per diem and meal receipts. Only one method shall be allowed.
- 3.3 Meals are reimbursable only to vendors who do not have necessary personnel located within a 45-mile radius of the Williamson County Courthouse, 710 Main Street, Georgetown, Texas 78626, who are capable of carrying the vendor's obligations to the County. Meals will not be reimbursed to vendors who are located within a 45-mile radius of the Williamson County Courthouse.
- 3.4 County will not reimburse for alcoholic beverages.
- 3.5 Tips are reimbursable but must be reasonable to limitation of meal allowance
- 3.6 No meals purchased for entertainment purposes will be allowed.
- 3.7 Meal reimbursement must be substantiated with a hotel receipt.

4. Lodging

- 4.1 Hotel accommodations require an itemized hotel folio as a receipt. The lodging receipt should include name of the motel/hotel, number of occupant(s), goods or services for each individual charge (room rental, food, tax, etc.) and the name of the occupant(s). Credit card receipts or any other form of receipt are not acceptable.
- 4.2 Vendors will be reimbursed for a single room rate charge plus any applicable tax. If a single room is not available, the vendor must provide documentation to prove that a single room was not available in order to justify the expense over and above the single room rate. A vendor may also be required to provide additional documentation if a particular room rate appears to be excessive.
- 4.3 Personal telephone charges, whether local or long distance, will not be reimbursed.

5. Airfare

- 5.1 The County will only reimburse up to a coach price fare for air travel.
- 5.2 The County will exclude any additional charges due to personal preference or personal convenience of the individual traveling (i.e. seat preference charges, airline upgrades, etc. will not be an allowable reimbursement)
- 5.3 Air travel expenses must be supported with receipt copy of an airline ticket or an itinerary with actual ticket price paid. If tickets are purchased through a website, vendor must submit a copy of the webpage showing the ticket price if no paper ticket was issued.
- 5.4 Cancellation and/or change flight fees may be reimbursed by the County but vendor must provide the Williamson County Auditor with documentation in writing from a County department head providing authorization for the change.
- 5.5 The County will not reimburse vendor for tickets purchased with frequent flyer miles.

6. Car Rental

- 6.1 Vendors that must travel may rent a car at their destination when it is less expensive than other transportation such as taxis, airport shuttles or public transportation such as buses or subways.
- 6.2 Cars rented must be economy or mid-size. Luxury vehicle rentals will not be reimbursed. Any rental costs over and above the cost of a mid-size rental will be adjusted.
- 6.3 Vendors will be reimbursed for rental cars if the rental car cost would have been less than the mileage reimbursement cost (based on the distance from vendor's point of origin to Williamson County, Texas) had the vendor driven vendor's car.
- 6.4 Vendors must return a car rental with appropriate fuel levels as required by rental agreement to avoid the car rental company from adding fuel charges.
- 6.5 Rental agreement and credit card receipt must be provided to County as back up for the request for reimbursement.
- 6.6 Insurance purchased when renting vehicle may also be reimbursed.
- 6.7 Car Rental optional extras such as GPS, roadside assistance, and administrative fees on Tolls will not be reimbursed.

7. Personal Car Usage

- 7.1 Personal vehicle usage will be reimbursed in an amount equal to the standard mileage rate allowed by the IRS.
- 7.2 Per code of Federal Regulations, Title 26, Subtitle A, Chapter 1, Subchapter B, Part IX, Section 274(d), all expense reimbursement requests must include the following:
 - 7.2.1.1 Date
 - 7.2.1.2 Destination
 - 7.2.1.3 Purpose

- 7.2.1.4 Name of traveler(s)
- 7.2.1.5 Correspondence that verifies business purpose of the expense
- 7.3 The mileage for a personal vehicle must document the date, location of travel to/from, number of miles traveled and purpose of trip.
- 7.4 Mileage will be reimbursed on the basis of the most commonly used route.
- 7.5 Reimbursement for mileage shall not exceed the cost of a round trip coach airfare.
- 7.6 Reimbursement for mileage shall be prohibited between place of residence and usual place of work.
- 7.7 Mileage should be calculated from employee's regular place of work or their residence, whichever is the shorter distance when traveling to a meeting or traveling to Williamson County, Texas for vendors who are located outside of the Williamson County Courthouse, 710 Main Street, Georgetown, Texas 78626 by at least a 45-mile radius.
- 7.8 When more than one person travels in same vehicle, only one person may claim mileage reimbursement.
- 7.9 Tolls, if reasonable, are reimbursable. Receipts are required for reimbursement. If a receipt is not obtainable, then written documentation of expense must be submitted for reimbursement (administrative fees on Tolls will not be reimbursed).
- 7.10 Parking fees, if reasonable are reimbursable for meetings and hotel stays. For vendors who contract with a third party for visitor parking at vendor's place of business, Williamson County will not reimburse a vendor based on a percentage of its contracted visitor parking fees. Rather, Williamson County will reimburse Vendor for visitor parking on an individual basis for each time a visitor uses Vendor's visitor parking. Receipts are required for reimbursement. If a receipt is not obtainable, then written documentation of expense must be submitted for reimbursement.
- 7.11 Operating and maintenance expenses as well as other personal expenses, such as parking tickets, traffic violations, and car repairs and collision damage are not reimbursable.

8. Other Expenses

- 8.1 Taxi fare, bus tickets, conference registrations, parking, etc. must have a proper original receipt.

9. Repayment of Non-reimbursable Expense.

Vendors must, upon demand, immediately repay County for all inappropriately reimbursed expenses whenever an audit or subsequent review of any expense reimbursement documentation finds that such expense was reimbursed contrary to these guidelines and this Policy. Williamson County reserves the right to retain any amounts that are due or that become due to a vendor in order to collect any inappropriately reimbursed expenses that a vendor was paid.

10. Non-Reimbursable Expenses

In addition to the non-reimbursable items set forth above in this Policy, the following is a non-exhaustive list of expenses that will not be reimbursed by Williamson County:

- 10.1 Alcoholic beverages/tobacco products
- 10.2 Personal phone calls
- 10.3 Laundry service
- 10.4 Valet service (excludes hotel valet)
- 10.5 Movie rentals
- 10.6 Damage to personal items
- 10.7 Flowers/plants

- 10.8 Greeting cards
- 10.9 Fines and/or penalties
- 10.10 Entertainment, personal clothing, personal sundries and services
- 10.11 Transportation/mileage to places of entertainment or similar personal activities
- 10.12 Upgrades to airfare, hotel and/or car rental
- 10.13 Airport parking above the most affordable rate available
- 10.14 Excessive weight baggage fees or cost associated with more than two airline bags
- 10.15 Auto repairs
- 10.16 Babysitter fees, kennel costs, pet or house-sitting fees
- 10.17 Saunas, massages or exercise facilities
- 10.18 Credit card delinquency fees or service fees
- 10.19 Doctor bills, prescription and other medical services
- 10.20 Hand tools
- 10.21 Safety Equipment (hard hats, safety vests, etc.)
- 10.22 Office Supplies
- 10.23 Lifetime memberships to any association
- 10.24 Donations to other entities
- 10.25 Any items that could be construed as campaigning
- 10.26 Technology Fees
- 10.27 Sales tax on goods purchased
- 10.28 Any other expenses which Williamson County deems, in its sole discretion, to be inappropriate or unnecessary expenditures.

**EXHIBIT E
DEBARMENT CERTIFICATION**

STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

1. I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that A/E and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in **Paragraph 1(b)** of this certification;
 - d. Have not, within a three-year period preceding this application/proposal, had one or more public transactions* terminated for cause or default; and
 - e. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Cleary Zimmermann Engineers, LLC.

Brian Keller
Signature of Certifying Official

Brian Keller
Printed Name of Certifying Official

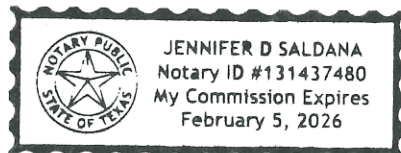
Principal
Title of Certifying Official

6/18/2025
Date

2. Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

* federal, state, or local

SUBSCRIBED and sworn to before me, the undersigned authority, by Brian Keller
the Principal of Cleary Zimmermann Engineers, on behalf of said firm.
Signatory Title Entity Name Signatory Name



Jennifer D Saldana
Notary Public in and for the
State of Texas

My commission expires: February 5, 2026

EXHIBIT F
CERTIFICATES OF INSURANCE

CxP and Subconsultant Certificates of Insurance attached: