

PROFESSIONAL SERVICES AGREEMENT

TABLE OF CONTENTS

<u>SECTION:</u>	<u>TITLE:</u>	<u>PAGE</u>
I.	<i>Employment of the Landscape Architect</i>	4
II.	<i>Basic Services of the Landscape Architect</i>	4
III.	<i>Fee Schedule</i>	5
IV.	<i>Period of Service</i>	5
V.	<i>Coordination with the County</i>	7
VI.	<i>Review of Work Product</i>	8
VII.	<i>Revision to Work Product</i>	8
VIII.	<i>Landscape Architect's Responsibility and Liability</i>	9
IX.	<i>Ownership of Documents</i>	10
X.	<i>Miscellaneous:</i>	11
	A. Severability	11
	B. Venue	11
	C. Equal Opportunity in Employment	11
	D. Certificate of Landscape Architect	11
	E. Notice	11
	F. Insurance Requirements	12
	G. Property Taxes	12
	H. Successors and Assigns	12
	I. Bidding Exemption	12
	J. Taxpayer Identification	13
	K. Compliance with Laws	13
	L. Reports of Accidents	13
	M. Entire Agreement	13
	N. Captions Not a Part Hereof	13
	O. Incorporation of Exhibits and Attachments	13
	P. Entity Status	13
	Q. Acknowledgement	14
	R. Definition of Landscape Architect	14
	Signature Page	15

TABLE OF CONTENTS (cont'd)

EXHIBIT I	<i>Compensation for Professional Services</i>	16
EXHIBIT II	<i>Hourly Rates</i>	18
EXHIBIT III	<i>Compensation for Additional Professional Services</i>	19
EXHIBIT IV	<i>Production Schedule</i>	20
EXHIBIT V	<i>Procedures for Termination or Suspension</i>	21
EXHIBIT VI	<i>Equal Opportunity in Employment</i>	23
EXHIBIT VII	<i>Insurance Requirements</i>	25
APPENDIX A	<i>Scope of Services</i>	27

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
COUNTY OF WILLIAMSON §

This Agreement is made and entered into this day by and between Williamson County, Texas, a political subdivision of the State of Texas, (*the "County"*) and Land Design Partners, Inc. (*the "Landscape Architect"*).

WHEREAS, *County* proposes to design and construct the Twin Springs Preserve and Beck Preserve Pathways (*the “Project”*) within Williamson County, Texas;

WHEREAS, **County** desires to obtain professional services for “landscape architecture design, surveying and mapping”;

WHEREAS, *Landscape Architect* has the professional ability and expertise to fulfill the requirements of the *Project*, and to counsel *County* in the design and implementation of the trail.

NOW, THEREFORE, *County* and *Landscape Architect* agree to the performance of the professional services by *Landscape Architect* and the payment for these services by *County* as set forth herein.

Section I

Employment of the Landscape Architect

County agrees to employ *Landscape Architect* and *Landscape Architect* agrees to perform professional Landscape Architectural services for the *Project* as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the County Judge or his designee and/or agent as designated in the Scope of Services in Attachment A, or as otherwise designated (*individually or collectively the "County Judge"*). The *County Judge* shall have complete authority for the purpose of resolving technical matters.

Section II

Basic Services of the Landscape Architect

- A. In consideration of the compensation herein provided, *Landscape Architect* shall perform professional Landscape Architectural services for the *Project*, which are acceptable to the *County Judge*, based on standard Landscape Architectural practices and the scope of work described in the Work Authorizations attached to this Agreement. *Landscape Architect* shall also serve as *County's* professional Landscape Architect in those phases of the *Project* to which this Agreement applies and will consult with and give advice to *County* during the performance of *Landscape Architect's* services.
- B. *Landscape Architect* shall not commence work until *Landscape Architect* has been thoroughly briefed on the scope of the *Project* and has been notified in writing by the *County Judge* to proceed, as evidenced by a Work Authorization substantially in the form of Attachment A to Exhibit I.
- C. *County* shall provide *Landscape Architect* 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 *Landscape Architect*; however, any and all such information shall remain the property of *County* and shall be returned, if the *County Judge* so instructs *Landscape Architect*.
- D. *Landscape Architect* shall perform the following Basic Scope of Services:
 - 1. The basic Scope of Services shall generally consist of all elements of work, materials and equipment required for the development of the *Project*, including any Public Hearings, satisfactory to the *County Judge* and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Williamson County.
 - 2. As part of the Scope of Services, *Landscape Architect* shall submit its work products to *County* for review at intervals as deemed necessary by Landscape Architect.
 - 3. The detailed Scope of Services for the *Project* is set forth herein as Attachment A to this Agreement, and is expressly incorporated and made a part hereof.

Section III

Fee schedule

- A. For and in consideration of the performance by ***Landscape Architect*** of the work described in the Scope of Services as defined in the Work Authorizations, ***County*** shall pay and ***Landscape Architect*** shall receive the fee set forth in the Work Authorizations. Exhibits I and II are attached hereto and made a part hereof. Invoices shall be submitted by ***Landscape Architect*** on a monthly basis and shall be considered past due if not paid within thirty (30) calendar days of the receipt of invoice by ***County***.
- B. For the performance of services not specifically described in the Scope of Services ***Landscape Architect*** shall receive the additional services compensation described in Exhibit III, which is attached hereto and made a part hereof. In the event of any dispute over the classification of ***Landscape Architect's*** services as basic or additional services under this agreement, the decision of the ***County Judge*** shall be final and binding on ***Landscape Architect***.

Section IV

Period of Service

- A. ***Landscape Architect*** shall perform the professional services described in Attachment A, the Scope of Services, in accordance with the Production Schedule attached hereto as Exhibit IV and made a part hereof.
- B. This Agreement shall become effective upon the date approved by ***County*** and will remain in full force and effect for the period required for the design, construction contract award and construction of the ***Project***, including any extensions of time, unless terminated earlier as provided for herein. ***Landscape Architect*** shall complete all design work as described in the Scope of Services as set forth in Exhibit IV from receipt by ***Landscape Architect*** of ***County's*** written Work Authorization and in accordance with the production timeline included in the Scope of Services.
- C. Neither ***Landscape Architect*** nor ***County*** shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond ***Landscape Architect's*** or ***County's*** reasonable control. Upon the discovery of such an event, ***Landscape Architect*** shall notify ***County***, and attend a special meeting with the ***County Judge*** to propose a program for a solution to the problem, and, if necessary, to establish an estimated period of time of suspension or extension of the work. A written request for an extension of time, when properly documented and justified by the circumstances, will be granted by the ***County Judge***.
- D. ***County*** may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within thirty (30) days of receipt by ***Landscape Architect*** of written Notice of Reinstatement from ***County***. ***Landscape Architect***, upon receipt of a Notice of Suspension shall follow the procedures described in

the attached Exhibit V, which is attached hereto and made a part hereof. In the event such suspension of the **Project** or the **Landscape Architect's** services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, **Landscape Architect** may terminate this Agreement in writing and such termination shall be treated as a Notice of Termination as provided herein.

- E. Either party may terminate this Agreement for the substantial failure of the other party to perform in accordance with the terms of this Agreement (the substantiality of such failure to be based on standard Landscape Architectural practices and the scope of work described on the Exhibits attached to this Agreement), through no material fault of the terminating party, and **County** may terminate this Agreement for reasons other than substantial failure by **Landscape Architect** to perform by delivering a written Notice of Termination which shall take effect on the tenth day following receipt. If mutually agreed upon, the obligation to provide services under this Agreement may be terminated without cause upon thirty (30) days written notice. **Landscape Architect** shall follow the procedures specified in Exhibit V upon issuance or receipt of such notice. In the event of termination of this Agreement because of the substantial failure of **Landscape Architect** to perform, **County** may prosecute the work to completion by contract or otherwise and, in such a case, **Landscape Architect** shall be liable for any additional costs incurred by **County**.
- F. **Landscape Architect** specifically acknowledges that **County** will sustain damages for each day beyond the required dates of completion of the Preliminary and Design Phases as defined in the Scope of Services that the work has not been accepted and approved. Because of the impracticality and extreme difficulty of fixing and ascertaining **County's** actual damages, **Landscape Architect** agrees that 0.00 and No/100 Dollars (\$0.00) per day shall be retained by **County** from any amounts due **Landscape Architect** for every day that **Landscape Architect** does not meet the production requirements set forth in Exhibit IV.
- G. Periods of time (i) during which a Notice of Suspension is in effect, or (ii) during which a submitted and complete Landscape Architectural work product is in technical review, as described in Section VI, or (iii) during which a delay directly related to matters described in section IV(C) above, shall not be taken into account in computing the amount of liquidated damages. In the event that a Landscape Architectural work product received by **County** is found to be incomplete, as defined in Section VI, Paragraph B, the period of time from the original submittal of the Landscape Architectural work product to the receipt of subsequent submittal necessary to produce a completed submittal will be taken into account in computing the number of days and the amount of liquidated damages
- H. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

Section V

Coordination with the County

- A. The **County Judge** will act on behalf of **County** with respect to the work to be performed under this Agreement. The **County Judge** shall have complete authority to interpret and define **County's** policies and decisions with respect to **Landscape Architect's** services. The **County Judge** may designate representatives to transmit instructions and receive information.
- B. **Landscape Architect** shall not commence work on any phase of the **Project** until a thorough briefing on the scope of the **Project** is received and a written Work Authorization is issued by the **County Judge** in substantially the form of Attachment A to Exhibit I.
- C. **Landscape Architect** shall furnish all available data and reasonable assistance necessary for the development of applications or supporting documentation for any permits, grants, or planning advances as applicable to the professional services to be rendered pursuant to this Agreement, provided that **Landscape Architect** shall not be obligated to develop additional data, appear at hearings, or prepare extensive reports, unless compensated for such work under other provisions of this Agreement.
- D. **Landscape Architect** shall have the responsibility at all times under the terms of this Agreement to advise **County** whether in **Landscape Architect's** judgment it is feasible to proceed with the recommendations given any constraints affecting the **Project**.
- E. **Landscape Architect** shall cooperate and coordinate with **County's** staff, and other Landscape Architects and contractors as reasonable and necessary and as required by the **County Judge**.

Section VI

Review of Work Product

- A. **Landscape Architect's** Landscape Architectural work product will be reviewed by **County** under its applicable technical requirements and procedures.
- B. Reports, plans, specifications, and supporting documents, (the "Landscape Architectural work products"), shall be submitted by **Landscape Architect** on or before the dates specified in the Production Schedule set forth in Exhibit IV. Upon receipt of the Landscape Architectural work products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the scope of services described herein) have been included in the Landscape Architectural work products in compliance with the requirements of this Agreement. . The completeness of any Landscape Architectural work product submitted to **County** shall be determined by **County** within five (5) calendar days of such submittal and **County** shall notify **Landscape Architect** in writing if such work product has been found to be incomplete. If a response is not received within the agreed upon time frame the submittal will be deemed accepted without comment and the consultant may proceed.

- C. If the submission is complete, **County** shall notify **Landscape Architect** and **County's** technical review process will begin. **County** shall have thirty (30) calendar days in which to complete technical review and complete review form provided by **Landscape Architect**, and return to **Landscape Architect** for consideration, acceptance and/or incorporation into the work products.
- D. If the submission is incomplete, **County** shall notify **Landscape Architect**, who shall perform such professional services as are required to complete the work and resubmit it to **County**. This process shall be repeated until a submission is complete.
- E. **County** shall review the completed work for compliance with the scope of work. If necessary, the completed work shall be returned to **Landscape Architect**, who shall perform any required work and resubmit it to **County**. This process shall be repeated until the work is accepted. "Acceptance" shall mean that in the **County Judge's** opinion substantial compliance with the requirements of this Agreement has been achieved.
- F. After acceptance, **Landscape Architect** shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive final approval by the **County Judge**. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.
- G. After approvals of final Landscape Architectural work products, **Landscape Architect** shall without additional compensation perform any work required as a result of **Landscape Architect's** development of the products which is found to be in error or omission due to **Landscape Architect's** negligence. However, any work required or occasioned for the convenience of **County** after approval of a final product shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of **Landscape Architect's** work products as complete, accepted, or approved under this Agreement, the decision of the **County Judge** shall be final and binding on **Landscape Architect**, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VII

Revision to Work Product

Landscape Architect shall make without expense to **County** such revisions to the work product as may be required to correct negligent errors or omissions so the work product meets the needs of **County**, but after the approval of the work product any revisions, additions, or other modifications made at **County's** request which involve extra services and expenses to **Landscape Architect** shall entitle **Landscape Architect** to additional compensation for such extra services and expenses, provided however, that **Landscape Architect** agrees to perform any necessary corrections to the work products, which are found to be in negligent error or omission as a result of the **Landscape Architect's** development of the work product, at any time, without additional

compensation. If it is necessary due to such error or omission by ***Landscape Architect*** to revise the plans in order to make the ***Project*** constructable, ***Landscape Architect*** shall do so without additional compensation. In the event of any dispute over the classification of ***Landscape Architect's*** services as Basic or Additional Services under this Agreement, the decision of the ***County Judge*** shall be final and binding on ***Landscape Architect***, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VIII

Landscape Architect's Responsibility and Liability

- A. ***Landscape Architect*** covenants to undertake no task in which a professional license or certificate is required unless he or someone under his direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, ***Landscape Architect*** shall inform ***County*** of such event within five working days.
- B. ***Landscape Architect*** shall be responsible for conformance with applicable federal and state laws, county permitting requirements, and city ordinances currently in effect, except as otherwise directed by the ***County Judge*** regarding county permitting or similar requirements properly waivable by the ***County Judge***.
- C. Acceptance and approval of the final plans by ***County*** shall not release ***Landscape Architect*** of any responsibility or liability for the accuracy and competency of his designs, working drawings, specifications, or other documents or work performed under this Agreement. Neither acceptance nor approval by ***County*** shall be an assumption of responsibility or liability by ***County*** for any defect, error, or omission in the designs, working drawings, specifications, or other documents prepared by ***Landscape Architect***.
- D. ***Landscape Architect*** shall indemnify, protect, and save harmless ***County***, its officials and employees and its agents and agents' employees from and against all claims, suits, actions, liability, loss, damage, attorney's fees, costs, and expenses (including, but not limited to expenses related to expert witnesses) of any kind whatsoever, to the extent arising from any negligent act, error or omission of ***Landscape Architect*** or any of its subcontractors in connection with the performance of services under this Agreement; provided, however, ***Landscape Architect*** shall not be responsible for the negligence of any other party, other than its subcontractors.
- E. ***Landscape Architect's*** opinions of probable ***Project*** cost or construction cost represent ***Landscape Architect's*** professional judgment as a design professional familiar with the construction industry, but ***Landscape Architect*** does not guarantee that proposals, bids, or the construction cost, itself, will not vary from ***Landscape Architect's*** opinions of probable cost.
- F. ***Landscape Architect*** shall perform all services and responsibilities required of ***Landscape Architect*** under this Agreement using at least that standard of care which a reasonably prudent Landscape Architect in Texas, who is licensed by the Texas Board of Architectural Examiners as applicable, would use in similar circumstances.

- G. ***Landscape Architect*** represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for performance of the services required under this Agreement and that ***Landscape Architect*** shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the reasonable opinion of ***County***, to perform the services when and as required and without delays. It is understood that ***County*** will approve assignment and release of all key ***Landscape Architect*** and professional personnel.
- H. All employees of ***Landscape Architect*** shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of ***Landscape Architect***, who in the opinion of ***County*** is incompetent or whose conduct becomes detrimental to the work or coordination with ***County***, shall upon ***County's*** and/or ***County Judge's*** request be immediately removed from association with the ***Project***.
- I. ***Landscape Architect*** shall furnish all equipment, transportation, supplies, and materials required for its operations under this Agreement.
- J. ***Landscape Architect*** shall place his Texas Professional Landscape Architect's seal of endorsement on all documents and Landscape Architectural data furnished to ***County***, as required by law.
- K. ***Landscape Architect*** is an independent contractor under this Agreement. Neither he nor any officer, agent nor employee of ***Landscape Architect*** shall be classified as an employee of the ***County***.

Section IX

Ownership of Documents

- A. Any and all documents, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by ***Landscape Architect*** are the property of both the ***Landscape Architect*** and the ***County*** and upon completion of the work or termination of this Agreement or as otherwise instructed by ***County*** and/or ***County Judge***, shall deliver a copy to the ***County***.
- B. Any reuse by ***County*** of any such documents described in subsection A above, shall be at the ***County's*** sole risk and without liability or legal exposure to the ***Landscape Architect***. Should ***Landscape Architect*** be terminated, ***Landscape Architect*** shall not be liable for ***County's*** use of partially completed designs, plans, or specifications on this, except to the extent such documents were deemed complete or otherwise "Accepted" or "Approved" as provided herein or represent completed work sealed by ***Landscape Architect***, or Civil Engineer, or Surveyor, as applicable, as specified by professional standards. The ***Landscape Architect*** shall not be liable for ***County's*** use of any documents described in Section A above, on any other project.
- C. ***Landscape Architect*** will not be responsible for any use or any modifications to the plans and documents described in subsection A performed by any entity other than Williamson County, and ***County's*** respective Landscape Architects and contractors, without the specific written consent of ***Landscape Architect***.

Section X
Miscellaneous

- A. **Severability.** Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be limited to the clause, sentence, provision, paragraph or article so held to be invalid, illegal, or ineffective.
- B. **Venue.** It is contemplated that this Agreement shall be performed in Williamson County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- C. **Equal Opportunity in Employment.** *Landscape Architect* agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit VI, which is attached hereto and made a part hereof.
- D. **Certificate of Landscape Architect.** *Landscape Architect* certifies that neither *Landscape Architect* nor any members of *Landscape Architect's* firm has:
- (1) Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bonafide employee working solely for *Landscape Architect*) to solicit or secure the work provided by the Agreement.
 - (2) Agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
 - (3) Paid or agreed to pay to any firm, organization, or person (other than bonafide employees working solely for *Landscape Architect*) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.
- Landscape Architect* further agrees that this certification may be furnished to any local, state or federal governmental agencies in connection with this Agreement and for those portions of the **Project** involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.
- E. **Notice.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

LANDSCAPE

ARCHITECT: Land Design Partners, Inc.
Attn: Brent Luck
221 West Sixth Street, Suite 300
Austin, Texas 78701

COUNTY: Williamson County Judge
Dan A. Gattis
701 Main St. Suite 101
Georgetown, Texas 78626

with copy to: Honorable Jana Duty
Williamson County Attorney
405 M.L.K. St.
Georgetown, TX 78626

and to: Jim Rodgers
Director, Parks and Recreation
350 Discovery Blvd.
Cedar Park, TX 78613

and to: James Gilger
Contract Management Auditor
701 S. Main, Ste. 301
Georgetown, TX 78626

- F. **Insurance Requirements.** *Landscape Architect* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VII, which is attached hereto and made a part hereof.
- G. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent *County* becomes aware that *Landscape Architect* is delinquent in the payment of property taxes related to property located in Williamson County at the time of invoicing, *Landscape Architect* hereby assigns any payments to be made for services rendered hereunder to the Williamson County Tax Assessor-Collector for the payment of said delinquent taxes. Notwithstanding the above, *County* shall not have an affirmative duty to determine if *Landscape Architect* is delinquent in the payment of property taxes.
- H. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of *County* and *Landscape Architect* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Landscape Architect* may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- I. **Bidding Exemption.** This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.

- J. ***Taxpayer Identification.*** ***Landscape Architect*** shall provide to ***County Judge*** upon submittal of ***Landscape Architect's*** initial invoice requesting payment Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations.
- K. ***Compliance with Laws.*** ***Landscape Architect*** shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the ***Landscape Architect*** shall furnish the ***County*** with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
- L. ***Reports of Accidents.*** Within 24 hours after ***Landscape Architect*** 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 the ***Landscape Architect***), whether or not it results from or involves any action or failure to act by the Landscape Architect or any employee or agent of the Landscape Architect and which arises in any manner from the performance of this Agreement, the Landscape Architect shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Landscape Architect shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Landscape Architect, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Landscape Architect's performance of work under this Agreement.
- M. ***Entire Agreement.*** This Agreement represents the entire and integrated Agreement between ***County*** and ***Landscape Architect*** and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both ***County*** and ***Landscape Architect***. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS COURT.
- N. ***Captions Not a Part Hereof.*** The captions or subtitles of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- O. ***Incorporation of Exhibits and Attachments.*** All of the Exhibits and Attachments, and Appendices referred to in the Agreement are incorporated by reference as if set forth verbatim herein.
- P. ***Entity Status.*** By my signature below, I certify that ***Landscape Architect*** is a corporation, duly authorized to transact and do business in the State of Texas.

- Q. **Acknowledgement.** As a duly authorized representative of **Landscape Architect**, I acknowledge by my signature below that I have read and understand the above paragraphs and that **Landscape Architect** has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.
- R. **Definition of Landscape Architect.** The term “Landscape Architect” as used herein is defined as including Registered Professional Landscape Architects, as applicable to the work to be performed under this Agreement, and any reference to professional standards in regards to a Registered Landscape Architect shall relate to those standards promulgated by the Texas Board of Architectural Examiners.
- S. **Funding.** Williamson County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. **Landscape Architect** understands and agrees that the 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.
- T. **Right to Audit.** **Landscape Architect** agrees that the representatives of the Office of the County Auditor or other authorized representatives of County shall have access to, and the right to audit, examine, or reproduce, any and all records of the **Landscape Architect** for this Project including records related to the Contractor’s performance, provided that the County’s right to audit such books and records are limited to the verification of invoice quantities to shipments and shipment receipts, upon advance notice and during normal business hours. Audits shall be at the County’s expense.
- U. **Force Majeure.** County may grant relief from the performance of the contract if the **Landscape Architect** is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the contractor. The burden of proof for the need of such relief shall rest upon the **Landscape Architect**. To obtain release based on force Majeure, the **Landscape Architect** shall file a written request with the County.

EXECUTED this ___ day of _____, 2009.

THE LANDSCAPE ARCHITECT:

WILLIAMSON COUNTY:

Land Design Partners, Inc.

BY: _____

BY: _____

Printed Name: Brent Luck

Printed Name: Dan A. Gattis

Title: Vice President

Title: Williamson County Judge

Date: _____

Date: _____

Reviewed as to Form By:

Hal C. Hawes
Assistant County Attorney

James R. Gilger
Contract Management Auditor

EXHIBIT I

COMPENSATION FOR PROFESSIONAL SERVICES

SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The lump sum fee for the performance of the Scope of Services described in the Agreement shall be outlined in **Work Authorizations**.
- 1.2 The basis of compensation for additional services of principals and employees engaged in the performance of the work shall be the hourly rates set forth in attached Exhibit II.
- 1.3 *Landscape Architect* shall be reimbursed for non-labor and subcontract expense incurred in the performance of the services under this Agreement at invoice cost.

SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 *Landscape Architect* and *County* acknowledge the fact that the not-to-be-exceeded fee is the total estimated costs of services to be rendered under this Agreement. This not-to-be-exceeded fee is based upon the labor and non-labor costs set forth in Exhibit II to this Agreement and described above, estimated to be required in the performance of the various phases of work provided for under this Agreement. Should the actual costs of the services rendered under this Agreement be less than such estimated cost, then *Landscape Architect* shall receive compensation for only those services actually rendered.

SECTION 3 – WORK AUTHORIZATIONS

- 3.1 *County* will prepare and issue Work Authorizations, in the form identified and attached hereto as Attachment A to authorize the *Landscape Architect* to perform one or more tasks. Each Work Authorization will include a description of the work to be performed, a description of the tasks, generally address development and compliance with a schedule, and a fee amount agreed upon by the *County* and *Landscape Architect*. The amount payable for a Work Authorization shall be described in the Work Authorization. The Work Authorization will not waive the *Landscape Architect's* responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.
- 3.2 Work included in a Work Authorization shall not begin until *County* and *Landscape Architect* have signed the Work Authorization. All work should be completed on or before the completion date if specified in the Work Authorization. The *Landscape Architect* shall promptly notify the *County* of any event which will affect completion of the Work Authorization, although such notification shall not relieve the *Landscape Architect* from costs or liabilities resulting from delays in completion of the Work Authorization. Any changes in the Work Authorization shall be enacted by a written Supplemental Work Authorization before additional work may be performed or additional costs incurred. Any Supplemental Work Authorization must be executed by

both parties within the period specified in the Work Authorization. The ***Landscape Architect*** shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a Supplemental Work Authorization.

SECTION 4 - ADDITIONAL SERVICES

- 4.1 For additional services, compensation shall be negotiated in accordance with Exhibit III.
- 4.2 ***Landscape Architect*** shall be compensated for extra services not included in the Scope of Services described in the Agreement developed on the basis specified in Exhibit III; however, ***Landscape Architect*** shall not be compensated for work made necessary by ***Landscape Architect's*** negligent errors or omissions.
- 4.3 The maximum amount payable under this Agreement without modification (the “***Compensation Cap***”) is outlined in **Work Authorizations.**, provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the ***Compensation Cap***.

SECTION 5 – REQUIRED SUPPORTING DOCUMENTATION

- 5.1 Upon submittal of the initial invoice for service, ***Landscape Architect*** shall provide ***County Judge*** 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.
- 5.2 All invoices submitted to ***County Judge*** will be accompanied by an original, complete packet of supporting documentation. Invoices should contain the Consultants representation of the percentage of completion relative worked executed towards the completion of the ***Project***.
- 5.3 For additional services performed pursuant to Section III B of this Agreement, a separate invoice or itemization of this work will be presented with the same requirements for supporting documentation as in Section 5.2 of this Exhibit.
- 5.4 Invoices requesting reimbursement for expenditures related to the project (reimbursables) must be accompanied by copies of the provider’s invoice which was previously paid by ***Landscape Architect***.

EXHIBIT II

HOURLY RATES

Principal Landscape Architect	\$165.00 /hr
Senior Project Manager	\$150.00 /hr
Project Manager	\$135.00 /hr
Staff Landscape Architect/Designer	\$115.00 /hr
Production	\$100.00 /hr
Technical Administration	\$90.00 /hr

EXHIBIT III

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

1. For the performance of work not described in the Basic Scope of Services of the Agreement, *County* shall pay and *Landscape Architect* shall receive, under a negotiated contract modification, compensation based rates set forth in Exhibits I and II to the Agreement.
2. The performance of any additional services must be authorized in writing in advance by the *County Judge*.
3. In the event of any dispute over the classification of *Landscape Architect's* services as either basic or additional services, the decision of the *County Judge* shall be final and binding.

EXHIBIT IV

PRODUCTION SCHEDULE

This Agreement shall become effective upon the date approved by the ***County*** and will remain in full force and effect for the period required for the design, construction contract award and construction of the ***Project***, including any extensions of time, unless terminated earlier as provided for herein. ***Landscape Architect*** shall complete all design work as described in the Scope of Services within a schedule to be coordinated and agreed upon by the ***County***.

The number of days expiring from the date of submittal to ***County*** of a complete work product to the date the review is finished and comments returned to ***Landscape Architect*** shall not be included within the days allowed for completion.

EXHIBIT V

PROCEDURES FOR TERMINATION OR SUSPENSION

Procedures for *Landscape Architect* to follow upon receipt of Notice of Termination:

1. Upon receipt of a Notice of Termination and prior to the effective date of the termination, *Landscape Architect* shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of the Notice of Termination *Landscape Architect* shall submit a statement, defining the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of termination shall be delivered to *County* as a pre-condition to final payment.
3. Upon the above conditions being met, *County* shall pay *Landscape Architect* for approved services actually performed under this Agreement, less previous payments.
4. Failure by *Landscape Architect* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Landscape Architect* of any and all rights or claims to collect the fee that *Landscape Architect* may rightfully be entitled to for services performed under this Agreement.

Procedures for *Landscape Architect* to follow upon receipt of Notice of Suspension:

1. Upon receipt of a Notice of Suspension and prior to the effective date of the suspension, *Landscape Architect* shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the effective date of suspension. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to *County*, but shall be retained by *Landscape Architect* unless requested by *County*.
2. During the period of suspension, *Landscape Architect* may submit the above-referenced statement to *County* for payment of the approved services actually performed under this Agreement, less previous payments.

Procedures for ***Landscape Architect*** to follow upon exercise of right to terminate for substantial failure of ***County*** to perform:

1. In the event that ***Landscape Architect*** exercises such right to terminate, within thirty (30) days after receipt by ***County*** of ***Landscape Architect's*** Notice of Termination, ***Landscape Architect*** shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed reports, designs, plans, studies, specifications and other work product shall be delivered to ***County*** as a pre-condition to final payment. Upon the above conditions being met, ***County*** shall pay ***Landscape Architect*** for approved services actually performed under this Agreement, less previous payments.
3. Failure by ***Landscape Architect*** to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by ***Landscape Architect*** of any and all rights or claims to collect the fee that ***Landscape Architect*** may rightfully be entitled to for services performed under this Agreement.

EXHIBIT VI**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. ***Landscape Architect*** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. ***Landscape Architect*** 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. ***Landscape Architect*** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. ***Landscape Architect*** will, in all solicitations or advertisements for employees placed by or on behalf of ***Landscape Architect***, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. ***Landscape Architect*** will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of ***Landscape Architect's*** obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. ***Landscape Architect*** will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor.
- E. ***Landscape Architect*** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of ***Landscape Architect's*** non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and ***Landscape Architect*** may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. ***Landscape Architect*** will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60), so that such provisions will be binding upon each subcontractor or vendor. ***Landscape Architect*** will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance: provided, however, that in the event ***Landscape Architect*** becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by ***County*** or Federal Agency, ***Landscape Architect*** may request ***County*** and United States to enter into such litigation to protect the interest of the United States.

EXHIBIT VII

INSURANCE REQUIREMENTS

During the life of this Agreement, ***Landscape Architect*** agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$500,000 per occurrence and \$1,000,000 in the aggregate, including coverage on same for independent subcontractor(s). **WILLIAMSON COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.**
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$25,000 per occurrence and \$50,000 in the aggregate. ***Landscape Architect*** shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$1,000,000.
- E. In the event ***Landscape Architect*** is self-insured in connection with any or all of the above-required insurance policies, ***Landscape Architect*** shall submit proof of such self-insurance and all financial statements as reasonably required by the ***County*** in order to determine the acceptability of such self-insurance.

Landscape Architect shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance or self-insurance has been approved by ***County***. ***Landscape Architect*** shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved. Approval of the insurance by ***County*** shall not relieve or decrease the liability of ***Landscape Architect*** hereunder.

The 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. ***Landscape Architect*** shall furnish ***County*** with a certification of coverage issued by the insurer. ***Landscape Architect*** shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

It is the intention of the *County* and the *County Judge*, and agreed to and hereby acknowledged by the *Landscape Architect*, that no provision of this Professional Services Agreement shall be construed to require the *County* or the *County Judge* to submit to mandatory arbitration or mediation 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 under this Exhibit which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.

APPENDIX A

SCOPE OF SERVICES

Refer to **Attachment A, Work Authorization No. 1**