

## AGREEMENT FOR ARCHITECTURAL SERVICES

THE STATE OF TEXAS           §  
  §  
COUNTY OF WILLIAMSON       §

THIS AGREEMENT is made and entered into by and between **Williamson County**, a body corporate and politic under the laws of the State of Texas, hereinafter "County", and **David Rothenberg D/B/A Rothenberg Design**, a sole proprietorship, hereinafter "Architect".

### RECITALS

The County intends to construct, remodel and renovate the Williamson County Regional Park Headquarters at 3005 County Road 175, Leander, TX 78641 (the "Project"). The County desires that the Architect perform certain professional architectural services in connection with the Project; and

The Architect represents that it is qualified and desires to perform such services;

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

### TERMS

#### SECTION I SCOPE OF AGREEMENT

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

The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the County's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the County's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the County shall not, except for reasonable cause, be exceeded by the Architect or County.

The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

The Architect's Basic Services consist of those described in Section II as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

#### SECTION II CHARACTER AND EXTENT OF SERVICES

The Architect shall render the following "Basic Services" in connection with the Project:

**A. DESIGN DEVELOPMENT PHASE**

Based on the County's program, schedule and budget requirements, the Architect shall prepare, for approval by the County, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1. Prepare one (1) copy of Design Development Documents for the Project which will delineate the following:

- a. Title Sheet (24" x 36" sheet size shall be utilized for all drawing sheets)

- b. Floor Plans

1. Plan information

- a. Internal and external dimensions for "hard fix";
      - b. Floor, slab, and level elevations;
      - c. Typical door types;
      - d. Typical partition types;
      - e. Building core element well worked out with dimensions:
        - Stairs (if applicable)
      - f. Built-in furniture items-indication only and keyed to design requirements:
        - Reception desk
        - Counters
        - Cabinets
        - Worktops
        - Special furniture and equipment (early clarification of what is "by owner")
        - Other types of equipment

2. Detail Plans

- c. General Elevations

- d. Sections

1. Building Sections
      2. Wall Sections

Dominant full heights sections conveying basic building configuration

- e. Details

Include non-typical design elements

f. Interior Elevations

Typical and special spaces, interfaced with, and cross-referenced to, floor and reflected ceiling plans. Indicate:

These should be of pre-final quality adequate to convey design intent.

g. Reflected Ceiling Plans

Typical and special spaces. Integrated plans reflecting structural, mechanical, and electrical impacts. Plans to indicate:

- Lighting layouts
- Soffits, coves, furrings
- Ceiling materials
- Acoustic treatments
- Relationship with partitions
- Interface with window details
- Perimeter conditions-details, notches
- Heating and ventilating register, diffuser locations
- Access panels
- Exposed structure

h. Schedules

1. Pre-final interior finishes
2. Frame and door
3. Preliminary hardware
4. Window and glazing

i. Specifications

Comprehensive, abbreviated methods, materials and systems descriptions in tune with the drawings. Use CSI format with applicable section numbers.

j. Preliminary Estimate of Construction Cost

---

k. Structural Design Development Set

1. Floor plans at the same scale as the architectural drawings;
2. Typical floor framing plans, including:
  - Sizing of beam drops
  - Slab openings
  - Thicknesses
  - Depressions
3. Framing indication and governing sizing at:
  - Roof structures
  - Bulkheads
  - Other
4. Nontypical framing scheme where required

5. All column points established;
6. Final column schedule;
7. Preliminary details and sections to adequately indicate structural system;
8. Preliminary details of major unique conditions that impact on scheme (as determined by the Architect);
9. Details indicating accommodation with mechanical/electrical at areas of major interface;
10. Design development specifications;
11. Any necessary recommended adjustments to the preliminary estimate of construction cost.

1. Mechanical/Electrical Design Development Set

1. Typical floor plans. Systems representation in diagrammatic (non-detailed) style, major items of equipment indicated, their space requirements and interface requirements with other systems. Indicate the following:
  - Chases
  - Mechanical rooms and electric closets
  - Convactor/fan coil locations
2. Required punctures:
  - Wall
  - Slab
  - Beam
3. Terminal plans (lobby, roof) with items of heavy equipment shown in diagrammatic style, with their space requirements indicated:
  - a. Heater spaces (include clear height requirements)
  - b. Transformer vaults (approval obtained from local utility company)
  - c. Switchgear, emergency generator, water storage tanks, fire pumps, if any
  - d. Cooling towers, major air-conditioning and air-handling equipment, packaged units
4. Locations of major air-handling equipment, including but not limited to cooling towers, exhaust fans;
5. Preliminary details of major and unique conditions that impact on scheme (as determined by the Architect);
6. Data to be developed in conjunction and in coordination with County personnel and others assisting the County:
  - a. Integrated diagrammatic lighting plans indicating all overhead mechanical and electrical equipment for typical floor and special spaces
  - b. Preliminary electrical fixture type schedule and cuts
  - c. Cuts and explanatory information for interior visual items such as:
    - Louvers
    - Registers

- Heating/cooling units
- Cabinets

d. Exterior louver requirements and proposed locations

7. Design development specifications;

2. Upon submittal of the Design Development Phase Documents for review and approval by the County, the Architect shall include cut sheets and manufacturer's literature. Assemble all cut sheets in a three hole binder and arrange in CSI format. Product cut sheets shall include but not necessarily be limited to the following: toilet fixtures and accessories, electrical and mechanical fixtures and related devices, hardware, doors, windows, interior and exterior finishes, graphics. All drawing sheets shall bear the responsible Architect's or Engineer's name and registration number and "interim review" stamp or note affixed.
3. Furthermore, when the Design Development Phase Documents are ready for submittal, the Architect shall present, in an open session, the proposed Design Development Phase Documents to the Williamson County Commissioners Court. Obtain approval of the Design Development Documents from the County in writing. Construction Documents Phase will not commence until signatures of the County's duly authorized representative(s) are affixed to the documents and written authorization by the County to proceed the next phase is received by the consultant.

#### B. CONSTRUCTION DOCUMENTS PHASE

1. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the County, the Architect shall prepare, for approval by the County, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the bidding/proposals and contracting for the construction of the Project. The construction documents shall include the following:
  - a. A project manual which shall include a set of technical specifications in accordance with the Construction Specification Institute's three-part format, typed one sided with letter quality characters, bid/proposal sheets, a set of bidding/proposal forms. The County shall provide the Uniform General Conditions of the contract, and related contract forms between the County and the contractor;
  - b. The Architect shall assist the County in the preparation of the necessary bidding/proposal information, bidding/proposal forms, the Conditions of the Contract, and the form of Agreement between the County and Contractor.
  - c. The Architect shall assist the County in connection with the County's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
2. Apply for and obtain all approvals and permits required by local, state, and federal authorities (i.e. Texas Licensing and Regulation Commission, Texas Accessibility Standards, etc.) and any local building permits on behalf of the County. Applications shall be made when the documents are 75% complete.

3. Furnish the County, for review and approval, one (1) 75% complete set of blueline prints of the drawings, and one (1) copy of specifications and final updated statements of probable construction costs, for the Project. All sheets shall bear the name of the responsible Architect or Engineer and registration number and "interim review" stamp or note affixed.
4. After incorporating the County's 75% review comments, furnish the County, for review and approval, five (1) 100% complete sets of prints of the drawings, and five (1) copies of the specifications and updated statements of the probable construction costs, for the Project.
5. After incorporating the County's comments, furnish and deliver to the County one set of electronic data files, Adobe PDF format, of the drawings and specifications, for the Project. Also provide one set of electronic data files, DWG format "AutoCAD Release 14" or higher, 650 MB compact disc(s) for all drawings. Also, provide one set of 650 MB compact disc(s) in Microsoft Word 97/Excel for all specifications.

C. COUNTY'S RESPONSIBILITIES

1. The County shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the County's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.
2. The County shall establish and periodically update an overall budget for the Project, including the Construction Cost, the County's other costs and reasonable contingencies related to all of these costs.
3. The County shall designate a representative authorized to act on the County's behalf with respect to the Project. The County or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
4. The County shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
5. The County shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings,

test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

6. The County shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
7. The County shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the County's needs and interests. Such services shall include auditing services the County may require.
8. The services, information, surveys and reports required by the above paragraphs (4) thru (8) in this section shall be furnished at the County's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.
9. The County shall provide prompt written notice to the Architect if the County becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

**D. OTHER CONDITIONS OR SERVICES**

1. Basic services include architectural; mechanical, electrical and plumbing design services (MEP services) and structural design services, as defined by the following items.
2. Geotechnical & surveying services are excluded. County shall provide a geotechnical/soil engineering report to the extent such services are necessary.
3. Civil Engineering design services are excluded (including design of storm, sanitary sewer, domestic water, and fire protection piping beyond 5'0" outside of building perimeter, irrigation systems). Architect's basic services include coordination for design and documentation.
4. Basic services include two revisions during design development. Additional revisions will be billed on an hourly basis pursuant to a separately written lump sum agreement.
5. Presentation quality renderings and other drawings for marketing purposes shall be considered Additional Services.
6. In the event that the design process is put on hold by the County/Contractor in excess of 90 days, when the design process is reinitiated, the Architect will invoice for remobilization time at a rate equal to 10% of the phase of services currently in progress.
7. If Architectural Assignment and/or certification are required, language must be consistent with Architect's liability insurance.

8. In providing services under this Agreement, the Architect will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
9. If, due to the Architect's negligence, a required item or component of the Project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provided betterment or upgrades or enhances the value of the project.

### SECTION III ADDITIONAL SERVICES AND CHARGES

The services described in this Section III are not included in Basic Services, and they shall be paid for by the County as provided in this Agreement, in addition to the compensation for Basic Services. The services shall only be provided if authorized or confirmed in writing by the County.

For the performance of services not specifically described as Basic Services under Section II above, County shall pay and Architect shall receive, under a negotiated written contract modification, Additional Services compensation based upon the method and rates set forth below:

<u>Position Classifications</u>	<u>Hourly Rates</u>
Principal.....	\$ 150.00
Project Manager.....	\$ 125.00
Production.....	\$ 100.00
Technical Administrator.....	\$ 100.00

Note 1: Hourly rates include office overhead, employee salary and benefits, and company profits.

Note 2: Hourly rates are applicable for the duration of the Project. Any changes to the applicable hourly rates following shall be submitted to the County and agreed to in writing by both parties prior to such new rates taking effect.

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

It is expressly understood and agreed that Architect shall not furnish any Additional Services without the prior written authorization of the County. The County shall have no obligation to pay for such Additional Services which have been rendered without the prior written authorization of the County as hereinabove required. **Furthermore, in no event will the County be obligated to compensate the Architect for any Additional Services and/or charges that are performed by Architect without the prior written authorization of the County.**

If Additional Services are required due to circumstances beyond the Architect's control, the Architect shall notify the County prior to commencing such services. If the County deems that



such services described are not required, the County shall give prompt written notice to the Architect. If the County indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

#### SECTION IV TIME FOR PERFORMANCE

Following the complete execution of this Agreement and upon the County's request, Architect shall submit a proposed production schedule to the County which delineates the time periods in which each phase of services described herein shall be completed by Architect. The County shall review the Architect's proposed production schedule and either approve same or submit to Architect any requested changes thereto. Following the County's approval of the Architect's production schedule, the time periods for Architect's performance may be extended, in writing, by the County as the Project proceeds.

#### SECTION V THE ARCHITECT'S COMPENSATION

##### A. BASIC FEE

For and in consideration of the services rendered by the Architect, and subject to the limit of appropriation under Section IX and the not-to-be-exceeded fee set forth below, the County shall pay to the Architect a "Basic Fee" for performance of the Basic Services under Section II, plus the amount payable under Section III (Additional Services and Charges). The total Basic Fee shall be allocated as follows:

1. For and in consideration of the services rendered by the Architect under Section II.A. (the Design Development Phase), the Architect shall receive a total compensation of \$3,950.00.
2. For and in consideration of the services rendered by the Architect under Section II.B. (the Construction Document Phase), the Architect shall receive a total compensation of \$5,950.00.

**The not-to-be-exceeded fee for the performance of the Basic Services under Section II above shall be the sum of \$10,000.00. In no event shall County be obligated to pay Architect a Basic Fee amount in excess of the said not-to-be-exceeded fee for performance of the Basic Services.**

##### B. REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following clauses:

1. transportation in connection with the Project, authorized travel and subsistence, and electronic communications;
2. fees paid for securing approval of authorities having jurisdiction over the Project;
3. reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;

4. expense of overtime work requiring higher than regular rates if authorized in advance by the County;
5. renderings, models and mock-ups which are requested by the County and which are not included as a part of the Basic Services;
6. expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the County in excess of that normally carried by the Architect and the Architect's consultants; and
7. reimbursable expenses as designated in Section III

C. PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

D. COMPENSATION FOR ADDITIONAL SERVICES

1. For Additional Services, as described in Section III, the County shall pay and Architect shall receive, under a negotiated written contract modification, Additional Services compensation based upon the method and rates set forth under Section III above.
2. For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services, compensation shall be computed as follows:

A multiple of 1.075 times the amounts billed to the Architect for such services.

E. REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in this Section V and any other items included in Section III as Reimbursable Expenses, if any, the amount of reimbursement shall be computed as follows:

A multiple of 1.075 times the expenses incurred by the Architect, which are directly related to the Project.

F. COMPENSATION CAP

The maximum amount payable under this Agreement for all Basic Services, Additional Services and any type of other expenses shall, without modification, be \$10,000.00 (the "**Compensation Cap**"). In no event may the aggregate amount of compensation and expenses exceed the Compensation Cap.

SECTION VI

## TIME OF PAYMENT AND RIGHT TO AUDIT

### A. PAYMENT TERMS

For the performance of the services provided for in this Agreement for the Design Development Phase (Section II.A.) and the Construction Document Phase (Section II.B.), 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 services to be provided under this Agreement, the Architect shall submit a sworn statement to the County, in a form acceptable to the Williamson County Auditor, setting forth the percentage of the services provided for by this agreement which were completed during such calendar month, and the compensation which is due plus the amounts payable under Section III (Additional Services and Charges) which have not been previously billed or paid. In the event the statement 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 Architect seeks reimbursement from the County, the charges shall be accompanied by an affidavit signed by an officer or principal of the Architect 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.

The County shall review the statements within thirty (30) days of receipt and approve them with such modifications, if any, as it deems appropriate. The County shall pay each statement within thirty (30) days after the County's approval provided however, that the approval or payment of any statement shall not be considered to be evidence of performance by the Architect to the point indicated by such statement or of receipt or acceptance by the County of the services covered by such statement.

In the event the County fails to pay Architect within thirty (30) days after the County's approval of the Architect's statement, the County shall be required to pay Architect interests charges in addition to the amounts due and owing. Interest charges for any late payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

### B. COUNTY'S RIGHT TO AUDIT

The Architect agrees to maintain, for a period of seven years, detailed records identifying each individual performing the services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, and provide such other details as may be requested by the County Auditor for verification purposes. Architect agrees that County or its duly authorized representatives shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Architect which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Architect shall retain its records within the boundaries of Williamson County and further

agrees that County shall have access during normal working hours at mutually convenient times to all necessary Architect facilities in compliance with the provisions of this section. County shall give Architect reasonable advance notice of intended audits.

## SECTION VII TERMINATION

This Agreement may be terminated by the County upon not less than seven (7) days' written notice to the Architect for the County's convenience and without cause. Upon receipt of such notice, the Architect shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. Within sixty (60) days after receipt of notice of termination, the Architect shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The County shall then pay the Architect that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made. Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated.

If the County fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven (7) days' written notice to the County. In the event of a suspension of services, the Architect shall have no liability to the County for delay or damage caused the County because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

If the Project is suspended by the County for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

If the Project is suspended or the Architect's services are suspended for more than ninety (90) consecutive days, the Architect may terminate this Agreement by giving not less than seven (7) days' written notice.

This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses due as of the date of termination.

**SECTION VIII**  
**NOTICE; COUNTY'S DESIGNATED REPRESENTATIVE**

**A. 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 the County or the Architect at the following addresses. If mailed, any notice or communication shall be deemed to be received three 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:

To the Architect:

Rothenberg Design  
c/o: David Rothenberg  
1801 Williams Drive  
Georgetown, Texas 78628

To the County:

Williamson County Judge  
Dan A. Gattis (or successor)  
301 S.E. Inner Loop, Ste. 109  
Georgetown, Texas 78626

with copy to:

Williamson County Parks Department  
Jim Rodgers, Director  
350 Discovery Blvd.  
Cedar Park, TX 78613

and to:

Williamson County Attorney  
Jana Duty (or successor)  
405 M.L.K. St., Box #7  
Georgetown, Texas 78626

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

**B. COUNTY'S DESIGNATED REPRESENTATIVE**

County hereby designates the individual listed herein below as the Owner's Designated Representative (ODR), who shall have express authority to act and bind the County to the extent authorized by law and to the extent and for the purposes described in the Contract Documents, including responsibilities for general administration of the Project. Unless otherwise specifically provided for, the ODR is the single point of contact between the County and Architect.

The ODR authorized to act on the County's behalf with respect to the Project and this Agreement is:

Jim Rodgers  
Williamson County Parks and Recreation Department  
350 Discovery Blvd  
Suite 207  
Cedar Park, Texas 78613  
Phone: (512) 260-4283

#### SECTION IX LIMIT OF APPROPRIATION

The County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. The 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.

#### SECTION X REVISION TO ARCHITECTURAL WORK PRODUCT

Architect shall make, without expense to County, revisions to all reports, plans, original drawings, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, data, sketches and/or schematics prepared by Architect (collectively referred to herein as the "Architectural Work Product(s)") as may be required to correct negligent errors or omissions so the Architectural Work Product meets the needs of County. However, any revisions, additions, or other modifications made at County's request, which involve extra services and expenses to Architect, shall entitle Architect to additional compensation for such extra services and expenses.

#### SECTION XI INSURANCE REQUIREMENTS

During the life of this Agreement, 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 \$500,000.00 per occurrence and \$1,000,000.00 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 \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate. 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 \$1,000,000.00.
- E. In the event Architect is self-insured in connection with any or all of the above-required insurance policies, 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.

Architect shall not commence any work under this Agreement until he has obtained all required insurance and such insurance or self-insurance has been approved by County. 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 Architect hereunder.

The required insurance must be written by a company approved to do business in the State of 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. Architect shall furnish County with a certification of coverage issued by the insurer. 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.

To the extent damages are covered by property insurance during construction, the County and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The County or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

It is the intention of the County and agreed to and hereby acknowledged by the Architect, that no provision of this Agreement shall be construed to require the County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as required by law or a court of law with jurisdiction over the provisions of this Agreement.

## SECTION XII SUCCESSORS AND ASSIGNS

The County and the Architect bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the County, nor the Architect shall assign or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.



### **SECTION XIII PUBLIC CONTACT**

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

### **SECTION XIV COMPLIANCE AND STANDARDS**

The Architect 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 architectural profession to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Architect's performance.

### **SECTION XV OWNERSHIP OF DOCUMENTS, COPYRIGHT**

The County shall be the absolute and unqualified owner of all Architectural Work Product prepared pursuant to this Agreement by the Architect and its subcontractors with the same force and affect as if the County prepared same. Copies of all completed or partially completed Architectural Work Product prepared pursuant to this Agreement by the Architect shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The Architect may retain one (1) set of reproducible copies of such documents and such copies shall be for the Architect's sole use. The Architect is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of the County, which may not be unreasonably withheld.

### **SECTION XVI INDEMNIFICATION**

**THE ARCHITECT SHALL INDEMNIFY, DEFEND AND SAVE HARMLESS THE COUNTY FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF THE ARCHITECT, ITS AGENTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT AND WHICH RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION OF THE ARCHITECT OR OF ANY PERSON EMPLOYED BY THE ARCHITECT. THE ARCHITECT SHALL ALSO INDEMNIFY, DEFEND AND SAVE HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY THE COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES WHICH MIGHT BE IMPOSED ON THE COUNTY AS THE RESULT OF SUCH ACTIVITIES BY THE ARCHITECT, ITS AGENTS OR EMPLOYEES.**

### **SECTION XVII**



## MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights 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.

## SECTION XVIII DISPUTE RESOLUTION AND CONSEQUENTIAL DAMAGES

### A. MEDIATION

1. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.
2. The County and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.
3. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. However, if the parties are unable to fully resolve the claims, disputes and other matters in question between them by mediation, either party may proceed with the institution of legal or equitable proceedings.
4. The parties hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

### B. CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and County waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this contract.

## SECTION XIX

## 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.

## SECTION XX SEVERABILITY

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

## SECTION XXI VENUE AND GOVERNING LAW

Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

## SECTION XXII 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.

## SECTION XXIII NO THIRD PARTY BENEFICIARIES

This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

## SECTION XXIV

## CONSTRUCTION

Each party to this Agreement 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.

## SECTION XXV RELATIONSHIP OF THE PARTIES

Each party to this Agreement, 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.

## SECTION XXVI 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 or employees, 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.

## SECTION XXVII NO WAIVER

No action or inaction taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and such action or inaction will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

## SECTION XXVIII COMPLAINTS

The Texas Board of Architectural Examiners (TBAE) has jurisdiction over complaints regarding the Architect's professional practices. The TBAE is located at 333 Guadalupe, Suite II-350, Austin, Texas 78701; mailing address is P.O. Box 12337, Austin, Texas 78711; and can be reached by phone at (512) 305-9000.

## SECTION XXIX MEANING OF TERMS

Except as otherwise expressly set forth herein, the terms in this Agreement shall have the same meaning as those in the County's General Conditions, current as of the date of this Agreement.

SECTION XXX  
HAZARDOUS MATERIALS

Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

SECTION XXXI  
ARCHITECT'S PROMOTIONAL  
AND PROFESSIONAL MATERIALS

The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the County's confidential or proprietary information if the County has previously advised the Architect in writing of the specific information considered by the County to be confidential or proprietary. The County shall provide professional credit for the Architect in the County's promotional materials for the Project.

SECTION XXXIII  
EXECUTION OF CERTIFICATES

If the County requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

SECTION XXXIV  
EXECUTION

The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners' Court of Williamson County, Texas, so authorizing. This Agreement shall not become effective until executed by all parties hereto. The Architect's duly authorized representative acknowledges by his/her signature below that he/she has read and understands the above paragraphs and that Architect has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.

**WILLIAMSON COUNTY:**


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

Dan A. Gattis  
Williamson County Judge

Date Signed: \_\_\_\_\_, 20\_\_\_\_

**ARCHITECT:**

**DAVID ROTHENBERG  
D/B/A ROTHENBERG DESIGN,  
A SOLE PROPRIETORSHIP**

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

Printed Name: DAVID ROTHENBERG

Title: OWNER

Date Signed: JULY 30, 2009